Federal Register

9–7–04 Tuesday
Vol. 69 No. 172 Sept. 7, 2004

United States Government Printing Office
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U.S. Government Printing Office
(ISSN 0097-6326)

Federal Register

9–7–04 Tuesday
Vol. 69 No. 172 Sept. 7, 2004

Pages 53999–54192

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18563; Directorate Identifier 2002–NM–98–AD; Amendment 39–13783; AD 2004–18–05]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–311 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Bombardier Model DHC–8–311 airplanes. This AD requires reviewing the airplane maintenance records to determine if you did the most recent bonding integrity inspection according to a certain revision of the Maintenance Program Support Manual (PSM), and doing related investigative and corrective actions if necessary. This AD is prompted by the discovery that a certain revision of the PSM omits several fuselage skin panels from a list of skin panels that must be inspected. We are issuing this AD to prevent disbonding of the subject skin panels, which could reduce the load-carrying capacity of the skin panels and result in reduced structural integrity of the airplane.

DATES: This AD becomes effective October 12, 2004.

ADDRESSES: You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW, room PL–401, on the plaza level of the Nassif Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT: *Technical information:* Jon Hjelm, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Westbury, New York 11590; telephone (516) 228–7323; fax (516) 794–5531.

Plain language information: Marcia Walters, *marcia.walters@faa.gov*.

Examining the Docket

The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR Part 39 with an AD for certain Bombardier Model DHC–8–311 airplanes. The proposed AD was published in the **Federal Register** on July 8, 2004 (69 FR 41213), to require reviewing the airplane maintenance records to determine if you did the most recent bonding integrity inspection according to a certain revision of the Maintenance Program Support Manual (PSM), and doing related investigative and corrective actions if necessary.

Comments

We provided the public the opportunity to participate in the development of this AD. No comments have been submitted on the proposed AD or on the determination of the cost to the public.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

This AD will affect about 8 airplanes of U.S. registry. The records review will take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $520, or $65 per airplane.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866;

(2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

2004–18–05 Bombardier, Inc. (Formerly de Havilland, Inc.): Amendment 39–13783. Docket No. FAA–2004–18563; Directorate Identifier 2002–NM–98–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective October 12, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model DHC–8–311 airplanes, serial numbers 202 through 298 inclusive, certificated in any category.

Unsafe Condition

(d) This AD was prompted by the discovery that a certain revision of the Maintenance Program Support Manual (PSM) omits several fuselage skin panels from a list of skin panels that must be inspected. We are issuing this AD to prevent disbonding of the subject skin panels, which could reduce the load-carrying capacity of the skin panels and result in reduced structural integrity of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Review of Maintenance Records

(f) Within 14 days after the effective date of this AD, review the airplane maintenance records or maintenance logbook to determine if the most recent bonding integrity inspection of the fuselage skin panels was done according to Bombardier Maintenance Program Support Manual (PSM) 1–83–7A, Revision 6, dated January 30, 2001.

(1) If it can conclusively be determined that the most recent bonding integrity inspection of the fuselage skin panels was done according to PSM 1–83–7A, Revision 5, dated April 30, 1999; or Revision 7, dated August 15, 2001: This AD requires no further action.

(2) If the most recent bonding integrity inspection of the fuselage skin panels was done according to PSM 1–83–7A, Revision 6, dated January 30, 2001, or if it cannot be conclusively determined what revision of PSM 1–83–7A was used: At the applicable compliance time specified in paragraph (f)(2)(i) or (f)(2)(ii) of this AD, do a resonance frequency inspection of the fuselage skin panels listed in Table 1 of this AD, according to a method approved by either the Manager, New York Aircraft Certification Office (ACO), FAA; or Transport Canada Civil Aviation (TCCA) (or its delegated agent). PSM 1–83–7A, Revision 7, dated August 15, 2001, is one approved method.

(i) If no disbonding was found during any previous bonding integrity inspection: Within 1,000 flight hours or 6 months after the effective date of this AD, whichever is first.

(ii) If any disbonding was found during any previous bonding integrity inspection: Within 6 weeks after the effective date of this AD.

TABLE 1.—FUSELAGE SKIN PANELS

Engineering drawing	Skin panel description	PSM 1–83–7A figure sheet
85330204	Skin, Right Side, Bottom	Figure 4/(Sheet 2).
85330201	Skin, Right Side	Figure 4/(Sheet 5).
85330180	Skin, Right Side, Top	Figure 4/(Sheet 6).
85330181	Skin, Left Side, Top	Figure 4/(Sheet 7).
85330106	Skin, Left Side, Bottom	Figure 4/(Sheet 14).
85330105	Skin, Left Side	Figure 4/(Sheet 15).
85330101	Skin, Left Side, Bottom	Figure 4/(Sheet 16).
85330033	Skin, Bottom	Figure 4/(Sheet 17).
85330032	Skin, Right Side, Lower	Figure 4/(Sheet 18).
85330032	Skin, Right Side, Lower with Service Door	Figure 4/(Sheet 19).
85330031	Skin, Left Side, Lower	Figure 4/(Sheet 20).
85332750	Skin, Bottom, Center	Figure 4/(Sheet 25).
85332750	Skin, Bottom, Center	Figure 4/(Sheet 26).

Repair

(g) If any disbonding is found during the resonance frequency inspection required by paragraph (f) of this AD: Before further flight, repair per a method approved by the Manager, New York ACO; or TCCA (or its delegated agent).

Limitation on Future Inspections

(h) As of the effective date of this AD, no person may use PSM 1–83–7A, Revision 6, dated January 30, 2001, to inspect for disbonding of fuselage skin panels on any airplane having any serial number 202 through 298 inclusive.

Alternative Methods of Compliance (AMOCs)

(i) The Manager, New York ACO, has the authority to approve AMOCs for this AD, if an AMOC is requested in accordance with the procedures found in 14 CFR 39.19.

Related Information

(j) Canadian airworthiness directive CF–2002–08, dated January 25, 2002, also addresses the subject of this AD.

Issued in Renton, Washington, on August 25, 2004.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–20204 Filed 9–3–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. 29334; Amendment No. 71–36]

Airspace Designations; Incorporation by Reference

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends 14 CFR part 71 relating to airspace designations to reflect the approval by the Director of the Federal Register of the incorporation by reference of FAA Order 7400.9M, Airspace Designations and Reporting Points. This action also explains the procedures the FAA will use to amend the listings of Class A, B, C, D, and E airspace areas; air traffic service routes; and reporting points incorporated by reference.

DATES: *Effective Date:* These regulations are effective September 16, 2004, through September 15, 2005. The incorporation by reference of FAA Order 7400.9M is approved by the Director of the Federal Register as of September 16, 2004, through September 15, 2005.

FOR FURTHER INFORMATION CONTACT: Christine Graves, Airspace and Rules, Office of System Operations and Safety, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

FAA Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, listed Class A, B, C, D and E airspace areas; air traffic service routes; and reporting points. Due

to the length of these descriptions, the FAA requested approval from the Office of the Federal Register to incorporate the material by reference in the Federal Aviation Regulations section 71.1, effective September 16, 2003, through September 15, 2004. During the incorporation by reference period, the FAA processed all proposed changes of the airspace listings in FAA Order 7400.9L in full text as proposed rule documents in the **Federal Register**. Likewise, all amendments of these listings were published in full text as final rules in the **Federal Register**. This rule reflects the periodic integration of these final rule amendments into a revised edition of Order 7400.9M, Airspace Designations and Reporting Points. The Director of the Federal Register has approved the incorporation by reference of FAA Order 7400.9M in section 71.1, as of September 16, 2004, through September 15, 2005. This rule also explains the procedures the FAA will use to amend the airspace designations incorporated by reference in part 71. Sections 71.5, 71.31, 71.33, 71.41, 71.51, 71.61, 71.71, 71.79, and 71.901 are also updated to reflect the incorporation by reference of FAA Order 7400.9M.

The Rule

This action amends part 71 of the Federal Aviation Regulations (14 CFR part 71) to reflect the approval by the Director of the Federal Register of the incorporation by reference of FAA Order 7400.9M, effective September 16, 2004, through September 15, 2005. During the incorporation by reference period, the FAA will continue to process all proposed changes of the airspace listings in FAA Order 7400.9M in full text as proposed rule documents in the **Federal Register**. Likewise, all amendments of these listings will be published in full text as final rules in the **Federal Register**. The FAA will periodically integrate all final rule amendments into a revised edition of the order, and submit the revised edition to the Director of the Federal Register for approval for incorporation by reference in section 71.1.

The FAA has determined that this action: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. This action neither places any new restrictions or requirements on the public, nor changes the dimensions or operation requirements of the airspace listings incorporated by reference in part 71. Consequently, notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Because this action will continue to update the changes to the airspace designations, which are depicted on aeronautical charts, and to avoid any unnecessary pilot confusion, I find that good cause exists, under 5 U.S.C. 553(d), for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

■ 2. Section 71.1 is revised to read as follows:

§ 71.1 Applicability.

The complete listing for all Class A, B, C, D, and E airspace areas; air traffic service routes; and reporting points can be found in FAA Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552 (a) and 1 CFR part 51. The approval to incorporate by reference FAA Order 7400.9M is effective September 16, 2004, through September 15, 2005. During the incorporation by reference period, proposed changes to the listings of Class A, B, C, D, and E airspace areas; air traffic service routes; and reporting points will be published in full text as proposed rule documents in the **Federal Register**. Amendments to the listings of Class A, B, C, D, and E airspace areas; air traffic service routes; and reporting points will be published in full text as final rules in the **Federal Register**. Periodically, the final rule amendments will be integrated into a revised edition of the order and submitted to the Director of the Federal Register for approval for incorporation by reference in this section. Copies of FAA Order 7400.9M may be obtained from Airspace and Rules, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267–8783. Copies of FAA Order 7400.9M may be inspected in Docket No. 29334 at the Federal Aviation Administration, Office of the Chief Counsel, AGC–200, Room 915G, 800 Independence Avenue, SW., Washington, DC, weekdays between 8:30 a.m. and 5 p.m., or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*. This section is effective September 16, 2004, through September 15, 2005.

§ 71.5 [Amended]

■ 3. Section 71.5 is amended by removing the words "FAA Order 7400.9L" and adding, in their place, the words "FAA Order 7400.9M."

§ 71.31 [Amended]

■ 4. Section 71.31 is amended by removing the words "FAA Order 7400.9L" and adding, in their place, the words "FAA Order 7400.9M."

§ 71.33 [Amended]

■ 5. Paragraph (c) of § 71.33 is amended by removing the words "FAA Order 7400.9L" and adding, in their place, the words "FAA Order 7400.9M."

§ 71.41 [Amended]

■ 6. Section 71.41 is amended by removing the words "FAA Order 7400.9L" and adding, in their place, the words "FAA Order 7400.9M."

§ 71.51 [Amended]

■ 7. Section 71.51 is amended by removing the words "FAA Order 7400.9L" and adding, in their place, the words "FAA Order 7400.9M."

§ 71.61 [Amended]

■ 8. Section 71.61 is amended by removing the words "FAA Order 7400.9L" and adding, in their place, the words "FAA Order 7400.9M."

§ 71.71 [Amended]

■ 9. Paragraph (b), (c), (d), (e), and (f) of § 71.71 are amended by removing the words "FAA Order 7400.9L" and adding, in their place, the words "FAA Order 7400.9M."

§ 71.79 [Amended]

■ 10. Section 71.79 is amended by removing the words "FAA Order 7400.9L" and adding, in their place, the words "FAA Order 7400.9M."

§ 71.901 [Amended]

■ 11. Paragraph (a) of § 71.901 is amended by removing the words "FAA Order 7400.9L" and adding, in their place, the words "FAA Order 7400.9M."

Issued in Washington, DC, on August 24, 2004.

Reginald C. Matthews,

Manager, Airspace and Rules.

[FR Doc. 04–19733 Filed 9–3–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

31 CFR Part 1

RIN 1505–AA97

Disclosure of Records in Legal Proceedings

AGENCY: Departmental Offices, Treasury.

ACTION: Final rule.

SUMMARY: This final rule makes several amendments to an interim final rule that amended Treasury's regulations that govern access to information and records in connection with litigation, including litigation in which neither the United States nor the Department of the Treasury is a party. The amendments made by this rule are in response to comments received on the interim final rule.

DATES: This final rule is effective September 7, 2004.

FOR FURTHER INFORMATION CONTACT: Christian Furey, Attorney-Advisor, Office of the Assistant to the General Counsel for Legislation, Litigation and Disclosure, at (202) 622–5441 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Under 5 U.S.C. 301, heads of Executive or military departments may prescribe regulations for the custody, use, and preservation of the department's records, papers, and property. Many departments and agencies have promulgated such regulations to provide procedures for the disclosure of official records and information. Generally, these are termed Touhy regulations, after the Supreme Court's decision in *United States* ex rel. *Touhy* v. *Ragen*, 340 U.S. 462 (1951). In that case, the Supreme Court held that an agency employee could not be held in contempt for refusing to disclose agency records or information when following the instructions of his or her supervisor regarding the disclosure. As such, an agency's Touhy regulations are the instructions agency employees are to follow when those employees receive requests or demands to testify or otherwise disclose agency records or information.

Treasury's Touhy regulations are codified in §§ 1.8 through 1.12 of title 31 of the Code of Federal Regulations. Generally, these regulations provide that employees of the Departmental Offices of the Department of the Treasury may not disclose documents or information in response to a demand or other order of a court or any other authority without first being authorized to do so. The purpose of these regulations is to conserve valuable agency resources, to protect Treasury employees from becoming enmeshed in litigation, and to protect sensitive government documents and decision making processes.

On March 17, 2003, Treasury published in the **Federal Register** an interim final rule (68 FR 12584) that amended its Touhy regulations. The interim final rule revised the regulations to prescribe the factors Treasury officials should consider when deciding whether to allow disclosure of documents and information in response to a demand or other order of a court, and which Treasury officials may make these decisions. The interim final rule also made a number of clarifying and technical amendments to the regulations and solicited public comment on Treasury's revisions to its Touhy regulations.

II. Analysis of the Final Rule

This final rule adopts the provisions of the interim final rule with the following changes.

Section 1.11 Testimony or the Production of Records in a Court or Other Proceeding

This section sets forth the policies and procedures of the Department regarding the testimony of employees as witnesses in legal proceedings and the production or disclosure of Treasury documents for use in legal proceedings.

Paragraph (b) defines the terms used throughout the regulations. Paragraph (b)(5) defines "employee" to include "officers of the Department, including contractors and any other individuals who have been appointed by, or are subject to the supervision, jurisdiction or control of the Secretary." We amended paragraph (b)(5) to clarify that the term "employee" also includes the Secretary of the Treasury. We also amended paragraph (b)(1) to clarify that the General Counsel may delegate his or her responsibilities as agency counsel with respect to the Departmental offices.

Paragraph (d) sets forth procedures applicable to requests for testimony or the production of documents. Paragraph (d)(3) of the interim final rule provided that any request for testimony or the production of documents in litigation in which neither the Department nor the United States is a party be supported by an affidavit setting forth the nature of the litigation, describing the nature of the testimony and/or documents sought, and explaining why the testimony and/or documents are desired. Under paragraph (d)(3)(i) there had to be a "showing that the desired testimony or document is not reasonably available from any other source."

One commenter suggested that the use of the terms "testimony" and "document" in paragraph (d)(3)(i) was misleading because it implied that unless a specific document or testimony from a particular person is not available from another source then the request should be granted. We agree with this comment. While government documents and testimony from specific individuals may be unique, the intent of this provision was to not grant requests if other documents and testimony could be obtained, thus ensuring that requesters have exhausted all other avenues to obtain the information sought. Accordingly, we are clarifying paragraph (d)(3)(i) to require a requester to show that information reasonably suited to the request is not available from any other source.

Paragraph (f)(1) provided that an "employee" may not provide expert testimony, except on behalf of the United States or a party represented by the Department of Justice, without written approval of agency counsel. Paragraph (f)(2) provided that agency counsel may approve a request for expert testimony from an "employee" or "former employee" upon a showing by the requestor of exceptional need or unique circumstances, provided that the testimony will not be adverse to the interests of Treasury or the United States. Paragraph (f)(3) provided expert or opinion testimony of a "former employee" is not subject to prohibition in paragraph (f)(1) if the testimony involves only general expertise gained while employed at the Department.

One commenter suggested that the term "former employee" be added to paragraph (f)(1) to clarify that the entirety of paragraph (f) applies to former employees. We agree that such an amendment is consistent with paragraph (f), and this final rule amends paragraph (f)(1) accordingly.

III. Procedural Requirements

Because this rule relates to agency management and personnel, and because it merely amends Treasury's

existing regulations to more closely parallel similar regulations adopted by other Federal agencies, it is not subject to notice and public procedure pursuant to 5 U.S.C. 553(a)(2) and (b)(B). For the same reasons, a delayed effective date is not required pursuant to 5 U.S.C. 553(a)(2) and (d)(3).

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply.

It has been determined that this interim final rule is not a significant regulatory action for purposes of Executive Order 12866.

List of Subjects in 31 CFR Part 1

Courts, Freedom of information, Government employees, and Privacy.

■ Therefore, for the reasons discussed in the preamble, the interim rule amending 31 CFR part 1 which was published at 68 FR 12584 on March 17, 2003 is adopted as a final rule with the following changes:

PART 1—[AMENDED]

■ 1. The authority citation for part 1 continues to read as follows:

Authority: 5 U.S.C. 301 and 31 U.S.C. 321. Subpart A also issued under 5 U.S.C. 552, as amended. Subpart C also issued under 5 U.S.C. 552a.

■ 2. Sections 1.8 through 1.12 are revised to read as follows:

§ 1.8 Scope.

The regulations in this subpart concern access to information and records other than under 5 U.S.C. 552. This subpart is applicable to the Departmental Offices and to the bureaus of the Department as defined in § 1.1(a) of this part, except to the extent that bureaus of the Department have adopted separate guidance governing the subject matter of a provision of this subpart.

§ 1.9 Records not to be otherwise withdrawn or disclosed.

Except in accordance with this part, or as otherwise authorized, Treasury Department officers and employees are prohibited from making records or duplicates available to any person who is not an officer or employee of the Department, and are prohibited from withdrawing any such records or duplicates from the files, possession or control of the Department.

§ 1.10 Oral information.

(a) Officers and employees of the Department may, in response to requests, orally provide information contained in records of the Department that are determined to be available to the public. If the obtaining of such information requires a search of records, a written request and the payment of the fee for a record search set forth in § 1.6 will be required.

(b) Information with respect to activities of the Department not a matter of record shall not be disclosed if the information involves matters exempt from disclosure under 5 U.S.C. 552 or the regulations in this part, or if the disclosure of such information would give the person requesting the information advantages not accorded to other citizens.

§ 1.11 Testimony or the production of records in a court or other proceeding.

(a) *Applicability.* (1) This section sets forth the policies and procedures of the Department regarding the testimony of employees and former employees as witnesses in legal proceedings and the production or disclosure of information contained in Department documents for use in legal proceedings pursuant to a request, order, or subpoena (collectively referred to in this subpart as a demand).

(2) This section does not apply to any legal proceeding in which an employee is to testify while on leave status regarding facts or events that are unrelated to the official business of the Department.

(3)(i) Nothing in this section affects the rights and procedures governing public access to records pursuant to the Freedom of Information Act (5 U.S.C. 552) or the Privacy Act (5 U.S.C. 552a).

(ii) Demands in legal proceedings for the production of records, or for the testimony of Department employees regarding information protected by the Privacy Act (5 U.S.C. 552a), the Trade Secrets Act (18 U.S.C. 1905) or other confidentiality statutes, must satisfy the requirements for disclosure set forth in those statutes and the applicable regulations of this part before the records may be provided or testimony given.

(4) This section is intended only to provide guidance for the internal operations of the Department and to inform the public about Department procedures concerning the service of process and responses to demands or requests, and the procedures specified in this section, or the failure of any Treasury employee to follow the procedures specified in this section, are not intended to, do not, and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law by a party against the United States.

(b) *Definitions.* For purposes of this section:

(1) *Agency counsel* means:

(i) With respect to the Departmental Offices, the General Counsel or his or her designee; or

(ii) With respect to a bureau or office of the Department, the Chief Counsel or Legal Counsel (or his or her designee) of such bureau or office.

(2) *Demand* means a request, order, or subpoena for testimony or documents related to or for possible use in a legal proceeding.

(3) *Department* means the United States Department of the Treasury.

(4) *Document* means any record or other property, no matter what media and including copies thereof, held by the Department, including without limitation, official letters, telegrams, memoranda, reports, studies, calendar and diary entries, maps, graphs, pamphlets, notes, charts, tabulations, analyses, statistical or informational accumulations, any kind of summaries of meetings and conversations, film impressions, magnetic tapes and sound or mechanical reproductions.

(5) *Employee* means all employees or officers of the Department, including contractors and any other individuals who have been appointed by, or are subject to the supervision, jurisdiction or control of the Secretary, as well as the Secretary of the Treasury. The procedures established within this subpart also apply to former employees of the Department where specifically noted.

(6) *General Counsel* means the General Counsel of the Department or other Department employee to whom the General Counsel has delegated authority to act under this subpart.

(7) *Legal proceeding* means all pretrial, trial and post trial stages of all existing or reasonably anticipated judicial or administrative actions, hearings, investigations, or similar proceedings before courts, commissions, boards, grand juries, or other tribunals, foreign or domestic. This phrase includes all phases of discovery as well as responses to formal or informal requests by attorneys or others involved in legal proceedings.

(8) *Official business* means the authorized business of the Department.

(9) *Secretary* means the Secretary of the Treasury.

(10) *Testimony* means a statement in any form, including personal appearances before a court or other legal tribunal, interviews, depositions, telephonic, televised, or videotaped statements or any responses given during discovery or similar proceedings, which response would involve more than the production of documents.

(c) *Department policy.* No current or former employee shall, in response to a

demand, produce any Department documents, provide testimony regarding any information relating to or based upon Department documents, or disclose any information or produce materials acquired as part of the performance of that employee's official duties or official status, without the prior authorization of the General Counsel or the appropriate agency counsel.

(d) *Procedures for demand for testimony or production of documents.* (1) A demand directed to the Department for the testimony of a Department employee or for the production of documents shall be served in accordance with the Federal Rules of Civil Procedure, Federal Rules of Criminal Procedure, or applicable state procedures and shall be directed to the General Counsel, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, or to the Chief or Legal Counsel of the concerned Department component. Acceptance of a demand shall not constitute an admission or waiver with respect to jurisdiction, propriety of service, improper venue, or any other defense in law or equity available under the applicable laws or rules.

(2) A subpoena or other demand for testimony directed to an employee or former employee shall be served in accordance with the Federal Rules of Civil or Criminal Procedure or applicable State procedure and a copy of the subpoena shall be sent to agency counsel.

(3)(i) In court cases in which the United States or the Department is not a party, where the giving of testimony or the production of documents by the Department, or a current or former employee is desired, an affidavit (or if that is not feasible, a statement) by the litigant or the litigant's attorney, setting forth the information with respect to which the testimony or production is desired, must be submitted in order to obtain a decision concerning whether such testimony or production will be authorized. Such information shall include: the title of the legal proceeding, the forum, the requesting party's interest in the legal proceeding, the reason for the demand, a showing that other evidence reasonably suited to the requester's needs is not available from any other source and, if testimony is requested, the intended use of the testimony, a general summary of the desired testimony, and a showing that no document could be provided and used in lieu of testimony. The purpose of this requirement is to assist agency counsel in making an informed decision regarding whether testimony or the production of document should be authorized. Permission to testify or produce documents will, in all cases, be limited to the information set forth in the affidavit or statement, or to such portions thereof as may be deemed proper.

(ii) Agency counsel may consult or negotiate with an attorney for a party, or the party if not represented by an attorney, to refine or limit a demand so that compliance is less burdensome or obtain information necessary to make the determination required by paragraph (e) of this section. Failure of the attorney or party to cooperate in good faith to enable agency counsel to make an informed determination under this subpart may serve, where appropriate, as a basis for a determination not to comply with the demand.

(iii) A determination under this subpart to comply or not to comply with a demand is without prejudice as to any formal assertion or waiver of privilege, lack of relevance, technical deficiency or any other ground for noncompliance.

(4)(i) Employees shall immediately refer all inquiries and demands made on the Department to agency counsel.

(ii) An employee who receives a subpoena shall immediately forward the subpoena to agency counsel. Agency counsel will determine the manner in which to respond to the subpoena.

(e) *Factors to be considered by agency counsel.* (1) In deciding whether to authorize the release of official information or the testimony of personnel concerning official information (hereafter referred to as "the disclosure") agency counsel shall consider the following factors:

(i) Whether the request or demand is unduly burdensome;

(ii) Whether the request would involve the Department in controversial issues unrelated to the Department's mission;

(iii) Whether the time and money of the United States would be used for private purposes;

(iv) The extent to which the time of employees for conducting official business would be compromised;

(v) Whether the public might misconstrue variances between personal opinions of employees and Department policy;

(vi) Whether the request demonstrates that the information requested is relevant and material to the action pending, genuinely necessary to the proceeding, unavailable from other sources, and reasonable in its scope;

(vii) Whether the number of similar requests would have a cumulative effect on the expenditure of agency resources;

(viii) Whether disclosure otherwise would be inappropriate under the circumstances; and

(ix) Any other factor that is appropriate.

(2) Among those demands and requests in response to which compliance will not ordinarily be authorized are those with respect to which any of the following factors exists:

(i) The disclosure would violate a statute, Executive order, or regulation;

(ii) The integrity of the administrative and deliberative processes of the Department would be compromised;

(iii) The disclosure would not be appropriate under the rules of procedure governing the case or matter in which the demand arose;

(iv) The disclosure, including release in camera, is not appropriate or necessary under the relevant substantive law concerning privilege;

(v) The disclosure, except when in camera and necessary to assert a claim of privilege, would reveal information properly classified or other matters exempt from unrestricted disclosure; or

(vi) The disclosure would interfere with ongoing enforcement proceedings, compromise constitutional rights, reveal the identity of an intelligence source or confidential informant, or disclose trade secrets or similarly confidential commercial or financial information.

(f) *Requests for opinion or expert testimony.* (1) Subject to 5 CFR 2635.805, an employee or former employee shall not provide, with or without compensation, opinion or expert testimony concerning official information, subjects, or activities, except on behalf of the United States or a party represented by the Department of Justice, without written approval of agency counsel.

(2) Upon a showing by the requestor of exceptional need or unique circumstances and that the anticipated testimony will not be adverse to the interests of the Department or the United States, agency counsel may, in writing, grant authorization for an employee, or former employee, to appear and testify at no expense to the United States.

(3) Any expert or opinion testimony by a former employee of the Department shall be excepted from § 1.11(f)(1) where the testimony involves only general expertise gained while employed at the Department.

(g) *Procedures when agency counsel directs an employee not to testify or provide documents.* (1) If agency counsel determines that an employee or former employee should not comply with a subpoena or other request for

testimony or the production of documents, agency counsel will so inform the employee and the party who submitted the subpoena or made the request.

(2) If, despite the determination of the agency counsel that testimony should not be given and/or documents not be produced, a court of competent jurisdiction or other appropriate authority orders the employee or former employee to testify and/or produce documents, the employee shall notify agency counsel of such order.

(i) If agency counsel determines that no further legal review of, or challenge to, the order will be sought, the employee or former employee shall comply with the order.

(ii) If agency counsel determines to challenge the order, or that further legal review is necessary, the employee or former employee should not comply with the order. Where necessary, the employee should appear at the time and place set forth in the subpoena. If legal counsel cannot appear on behalf of the employee, the employee should produce a copy of this subpart and respectfully inform the legal tribunal that he/she has been advised by counsel not to provide the requested testimony and/or produce documents. If the legal tribunal rules that the subpoena must be complied with, the employee shall respectfully decline to comply, citing this section and *United States* ex rel. *Touhy* v. *Ragen*, 340 U.S. 462 (1951).

§ 1.12 Regulations not applicable to official request.

The regulations in this part shall not be applicable to official requests of other governmental agencies or officers thereof acting in their official capacities, unless it appears that granting a particular request would be in violation of law or inimical to the public interest. Cases of doubt should be referred for decision to agency counsel (as defined in § 1.11(b)(1)).

Dated: August 23, 2004.

Arnold I. Havens,

General Counsel.

[FR Doc. 04–20219 Filed 9–3–04; 8:45 am]

BILLING CODE 4810–25–P

POSTAL SERVICE

39 CFR Part 111

Eligibility Requirements for Certain Nonprofit Standard Mail Material

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: In this final rule, the Postal Service adopts an amendment to *Domestic Mail Manual* standards governing insurance advertising in Nonprofit Standard Mail. The amendment sets forth guidelines for determining whether the coverage provided by an insurance policy offered by an authorized nonprofit organization to its members is not generally otherwise commercially available.

DATES: Effective September 8, 2004.

FOR FURTHER INFORMATION CONTACT: Jerome M. Lease, Mailing Standards, United States Postal Service, 202–268–7264.

SUPPLEMENTARY INFORMATION: In a proposed rule published in the **Federal Register** on June 15, 2004 (69 FR 33341), the Postal Service proposed an amendment to *Domestic Mail Manual* (DMM) E670.5.5, which provides guidelines for determining whether insurance solicitations are eligible to be mailed at Nonprofit Standard Mail rates ("nonprofit rates"). The Postal Service has determined to adopt the proposed amendment. The change sets forth additional circumstances where the coverage provided by a general type of insurance, such as homeowner's, property, casualty, marine, and professional liability, would be considered not generally otherwise commercially available and, accordingly, mail promoting that coverage would be eligible to be mailed at Nonprofit Standard Mail rates.

Mailings permitted at nonprofit rates according to the policies in effect since 1991 will continue to be eligible for the nonprofit rates. These include, as discussed in the proposal, material promoting charitable gift annuities and material promoting insurance to a target group that does not otherwise have a source to obtain that type of coverage. The change amends the DMM to clarify that section E670.5.5 does not restrict the use of the nonprofit rates for mailings of an authorized fraternal benefit society or any other nonprofit organization when the material advertises, promotes, or offers insurance that is underwritten by the nonprofit organization itself. Nor does it restrict the use of the nonprofit rates for mailings of an authorized organization's material that advertises, promotes, or offers insurance, if the coverage is provided or promoted by the nonprofit organization to its members, donors, supporters, or beneficiaries in such a way that those parties may make tax-deductible donations to the organization of their proportional shares of income in excess of costs that the nonprofit organization receives from the purchase of the coverage by its members, donors, supporters, or beneficiaries. The changes take into account court rulings, the Postal Service Appropriations Act of 1991, and related legislative history.

As explained in the proposal, mailings that are ineligible for Nonprofit Standard Mail rates under the cooperative mail rule or other standards remain ineligible for nonprofit rates, regardless whether they violate the amended standards related to insurance. Moreover, mailers continue to bear the burden to substantiate that mailings qualify for nonprofit rates, and may be asked to provide evidence to support eligibility for those rates before a mailing is accepted.

The Postal Service received one comment concerning its proposal. This comment supported the amendments proposed by the Postal Service.

Accordingly, for the reasons explained here and in the notice proposing the amended standard, the Postal Service adopts the rule as proposed.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

■ 2. Revise the *Domestic Mail Manual* (DMM) as set forth below:

E Eligibility

* * * * *

E600 Standard Mail

* * * * *

E670 Nonprofit Standard Mail

* * * * *

5.0 ELIGIBLE AND INELIGIBLE MATTER

* * * * *

5.5 Definitions, Insurance

[Revise 5.5 to read as follows:]

For the standard in 5.4b:

a. Except as specified in 5.5c, the phrase *not generally otherwise commercially available* applies to the actual coverage stated in an insurance policy, without regard to the amount of the premiums, the underwriting practices, and the financial condition of the insurer. When comparisons are made with other policies, consideration is given to coverage benefits, limitations, and exclusions, and to the

availability of coverage to the targeted recipients. When insurance policy coverages are compared to determine whether coverage in a policy offered by an organization is not generally otherwise commercially available, the comparison is based on the specific characteristics of the mailpiece recipients (*e.g.*, geographic location or demographics).

b. Except as specified in 5.5c, the types of insurance considered generally otherwise commercially available include, but are not limited to, homeowner's, property, casualty, marine, professional liability (including malpractice), travel, health, life, airplane, automobile, truck, motorhome, motorbike, motorcycle, boat, accidental death, accidental dismemberment, Medicare supplement (Medigap), catastrophic care, nursing home, and hospital indemnity insurance.

c. Coverage is considered not generally otherwise commercially available if either of the following conditions applies:

(1) The coverage is provided by the nonprofit organization itself (*i.e.*, the nonprofit organization is the insurer).

(2) The coverage is provided or promoted by the nonprofit organization in a mailing to its members, donors, supporters, or beneficiaries in such a way that the members, donors, supporters, or beneficiaries may make tax-deductible donations to the nonprofit organization of their proportional shares of any income in excess of costs that the nonprofit organization receives from the purchase of the coverage by its members, donors, supporters, or beneficiaries.

* * * * *

An appropriate amendment to 39 CFR part 111 will be published to reflect these changes.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. 04–20185 Filed 9–3–04; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

39 CFR Parts 310 and 320

Restrictions on Private Carriage of Letters

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This rule amends the Postal Service regulations on enforcement and suspension of the Private Express Statutes to correct obsolete addresses.

EFFECTIVE DATE: September 7, 2004.

FOR FURTHER INFORMATION CONTACT: Stanley F. Mires, (202) 268–2958.

SUPPLEMENTARY INFORMATION: Amendment of parts 310 and 320 is necessary to correct the addresses for inquiries and other correspondence regarding enforcement of the Private Express Statutes.

List of Subjects in 39 CFR Parts 310 and 320

Advertising; Computer technology.

■ For the reasons set forth above, the Postal Service amends 39 CFR Chapter I, Subchapter E as follows:

PART 310—[AMENDED]

■ 1. The authority citation for part 310 continues to read as follows:

Authority: 39 U.S.C. 401, 404, 601–606; 18 U.S.C. 1693–1699.

■ 2a. Revise § 310.5(b) to read as follows:

§ 310.5 Payment of postage on violation.

* * * * *

(b) The amount equal to postage will be due and payable not later than 15 days after receipt of formal demand from the Inspection Service or the Chicago Rates and Classification Service Center (RCSC) unless an appeal is taken to the Judicial Officer Department in accordance with rules of procedure set out in part 959 of this chapter.

* * * * *

■ 2b. Revise § 310.6 to read as follows:

§ 310.6 Advisory opinions.

An advisory opinion on any question arising under this part and part 320 of this chapter may be obtained by writing the Senior Counsel, Ethics and Information, U.S. Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260–1127. A numbered series of advisory opinions is available for inspection by the public in the Library of the U.S. Postal Service, and copies of individual opinions may be obtained upon payment of charges for duplicating services.

PART 320—[AMENDED]

■ 3. The authority citation for part 320 continues to read as follows:

Authority: 39 U.S.C. 401, 404, 601–606; 18 U.S.C. 1693–1699.

■ 4. Amend § 320.3 in the following manner—

■ a. Revise § 320.3(a) to read as set forth below; and

■ b. Amend § 320.3(b) by removing the words "properly identified postal inspector" and adding the words "properly identified representative of the RCSC" in their place.

§ 320.3 Operations under suspension for certain data processing materials.

(a) Carriers intending to establish or alter operations based on the suspension granted pursuant to § 320.2 shall, as a condition to the right to operate under the suspension, notify the National Administrator for the Private Express Statutes, U.S. Postal Service, RCSC, 3900 Gabrielle Lane, Rm. 111, Fox Valley, IL 60597–9599, of their intention to establish such operations not later than the beginning of such operations. Such notification, on a form available from the office of the National Administrator for the Private Express Statutes, shall include information on the identity and authority of the carrier and the scope of its proposed operations.

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 04–20184 Filed 9–3–04; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NV054–081; FRL–7808–7]

Approval and Promulgation of Implementation Plans; New Source Review; State of Nevada, Clark County Department of Air Quality and Environmental Management

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to partially approve and partially disapprove revisions to the Clark County portion of the Nevada State Implementation Plan. These revisions concern rules adopted by the Clark County Board of County Commissioners for issuing permits for new or modified stationary sources in Clark County to comply with the applicable permitting requirements under parts C and D of title I of the Clean Air Act as amended in 1990. These provisions of the Clean Air Act are designed to prevent significant deterioration in attainment areas and to attain the National Ambient Air Quality Standards in nonattainment areas. EPA is also approving as a revision to the Nevada State Implementation Plan a State regulation prohibiting the construction of certain types of major new or modified power plants that are under exclusive State jurisdiction in the nonattainment areas within Clark County. The intended

effect of today's final action is to ensure that Clark County's permitting rules are consistent with a ruling by the Ninth Circuit, see *Hall* v. *EPA*, 273 F.3d 1146 (9th Cir. 2001) and with the requirements of the Clean Air Act, as amended in 1990. EPA is amending the appropriate section of the Code of Federal Regulations to reflect the outcome of *Hall* v. *EPA*. Lastly, under section 110(k)(6) of the Act, EPA is correcting or clarifying certain previous final rulemaking actions taken by EPA on revisions to the Clark County portion of the Nevada State Implementation Plan.

DATES: *Effective Date:* This rule is effective on October 7, 2004.

ADDRESSES: You can inspect copies of the docket for this action during normal business hours at the Air Division, EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105. You may also see copies of the State's two submittals at the Nevada Division of Environmental Protection, 333 W. Nye Lane, Room 138, Carson City, Nevada 89706. Clark County's amended rules are available at the Clark County Department of Air Quality and Environmental Management, 500 S. Grand Central Parkway, Las Vegas, Nevada 89155.

FOR FURTHER INFORMATION CONTACT: Roger Kohn, EPA Region IX, Air Division, Permits Office (AIR–3), at (415) 972–3973 or *kohn.roger@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

Table of Contents

I. Proposed Action

A. The State's Submittal

On June 2, 2004 (69 FR 31056), we proposed a partial approval and partial disapproval of the rules listed in Table 1 as revisions to the Nevada State Implementation Plan (SIP). Specifically, we proposed to approve submitted Clark County Air Quality Regulations (CCAQR) sections 0, 11, 12 (except subsections 12.2.18 and 12.2.20), 58 and 59 and to approve submitted Nevada Administrative Code section 445B.22083. We proposed to disapprove submitted CCAQR subsections 12.2.18 and 12.2.20 and CCAQR subsection 52.8.

TABLE 1.—SUBMITTED RULES [1]

Agency	Rule #	Rule title	Adopted	Submitted
DAQEM	0	Definitions	10/07/03	10/23/03
DAQEM	11	Ambient Air Quality Standards	10/07/03	10/23/03
DAQEM	12	Preconstruction Review for New or Modified Stationary Sources	10/07/03	10/23/03
DAQEM	52.8	Gasoline Dispensing Facilities—Section 52 Offset Program	10/07/03	10/23/03
DAQEM	58	Emission Reduction Credits	10/07/03	10/23/03
DAQEM	59	Emission Offsets	10/07/03	10/23/03
SEC	NAC 445B.22083	Construction, major modification or relocation of plants to generate electricity using steam produced by burning of fossil fuels.	03/29/94	11/20/03

[1] In Clark County, the Board of County Commissioners is responsible for adopting, modifying, or repealing the Clark County Air Quality Regulations (CCAQR). Clark County's administrative departments were recently reorganized, and the Clark County Department of Air Quality Management (DAQM), cited in the proposed rule as the applicable local air pollution control agency, has been subsumed within a new county department named the Clark County Department of Air Quality and Environmental Management (DAQEM). The DAQEM, like its predecessor (i.e., the DAQM), is responsible for administering the Clark County Air Quality Regulations. In this final rule, we use the term "DAQEM" to refer to the local air agency, and term "SEC" to refer to the State Environmental Commission.

We proposed a partial approval and a partial disapproval because, while we determined that most of the rules complied with the relevant Clean Air Act (CAA or Act) requirements, we determined that certain severable subsections of the rules did not so comply. We took this proposed action after finding the SIP submittal dated October 23, 2003, containing the local New Source Review (NSR) rules, to be complete on November 18, 2003. The SIP submittal dated November 20, 2003, containing the State regulation,[2] was deemed complete by operation of law on May 20, 2004.

Our June 2, 2004 proposed action contains more information on the rules and our evaluation.

B. Vacature of EPA Approval of Previous Versions of These Rules

In our June 2, 2004 proposed rule, we also proposed to delete 40 CFR 52.1470(c)(36) and (37) in recognition of the vacature by the Ninth Circuit Court of Appeals of our approval of previous versions of the Clark County New Source Review (NSR) rules in *Hall* v. *EPA*, 273 F.3d 1146 (9th Cir. 2001).

C. Correction or Clarification of Previous EPA SIP Actions on Clark County Rules

Lastly, in our June 2, 2004 proposed rule, we proposed to correct certain provisions of the Clark County portion of the Nevada SIP that we approved in error and to revise certain provisions of the Clark County portion of the Nevada SIP that warrant clarification. Specifically, we proposed to delete SIP section 1, subsections 1.79 (Significant source of total chlorides) and 1.94 (Total Chlorides); SIP section 15 (Prohibition of Nuisance Conditions); SIP section 29 (Odors in the Ambient Air); SIP section 40, subsection 40.1 (Prohibition of Nuisance Conditions); SIP section 42, subsection 42.2 (untitled but related to nuisance from open burning); and SIP section 43, subsection 43.1 (Odors in the Ambient Air), from the appropriate paragraphs of 40 CFR 52.1470 ("Identification of plan"). We also proposed to revise the appropriate paragraphs in 40 CFR 52.1470 to clarify that former SIP section 12 (Upset, Breakdown, or Scheduled Maintenance) and submitted section 25.1 (untitled, but related to upset, breakdown, or scheduled maintenance) are not approved into the Clark County portion of the Nevada SIP, and to clarify that SIP section 33 (Chlorine in Chemical

[2] NAC 445B.22083 prohibits new power plants or major modifications to existing power plants under State jurisdiction (*i.e.*, plants that generate electricity using steam produced by burning of fossil fuels but not including any plant which uses technology for a simple or combined cycle combustion turbine), within the Las Vegas Valley nonattainment area and certain other areas within Clark County. See the proposed rule at 69 FR 31058–31059 for more information on this State regulation.

Processes) was, and continues to be, approved into the Clark County portion of the Nevada SIP as part of our approval of the overall post-1982 ozone plan for Las Vegas Valley.

D. May 20, 2004 Federal Register Direct Final and Proposed Rule on CCAQR Section 11

On May 20, 2004, we published a direct final rule (69 FR 29074) and a proposed rule (69 FR 29120) approving the same version of CCAQR section 11 for which we subsequently proposed approval in our June 2, 2004 action. On our own initiative, we withdrew the direct final rule with respect to CCAQR section 11 in a partial withdrawal action that we published on July 2, 2004 (69 FR 40324). We withdrew the direct final action on CCAQR section 11 to avoid confusion with our subsequent proposed rule. EPA's May 20, 2004 proposed rule provided for a 30-day public comment period. We received no comments on the May 20, 2004 proposal. In today's notice, we are finalizing action proposed both on May 20, 2004 and again on June 2, 2004 to approve CCAQR section 11, as adopted on October 7, 2003 and submitted to EPA on October 23, 2003, into the Clark County portion of the Nevada SIP.

II. Public Comments

EPA's June 2, 2004 proposed rule provided for a 30-day public comment period. During this period, we received comments from the following parties:

(1) Ray Bacon, Executive Director, Nevada Manufacturers Association ("NMA"), letter dated June 28, 2004, calling for clarification of which DAQEM rules are proposed to be part of the SIP and which are not, citing inadequate public access to NSR materials, recommending that only an offset ratio of 1:1 be made part of the SIP, calling for elimination of conflicting and confusing definitions, calling for the redesignation of Clark County to "attainment" for the carbon monoxide (CO) National Ambient Air Quality Standard (NAAQS) and the revision of the NSR program accordingly, and calling for a revision of EPA's evaluation of the SIP submittals to reflect the current Federal NSR regulations;

(2) Christine Robinson, Director, Clark County Department of Air Quality and Environmental Management (DAQEM), letter dated July 1, 2004, citing an apparent error in EPA's interpretation of the requirements for oxides of nitrogen (NO_X) under the existing SIP NSR program, but supporting EPA's overall conclusions about the comparative stringency of the submitted NSR program relative to the existing SIP NSR program; and

(3) Robert W. Hall, President, Nevada Environmental Coalition, Inc. ("NEC"), letter dated July 2, 2004, objecting to the proposed approval of the submitted NSR program as inconsistent with sections 110(l), 116, 171(1), and 193 of the Act, particularly as those sections relate to the pollutants for which Las Vegas Valley has been designated nonattainment (*i.e.*, particulate matter (PM–10), CO, and ozone).

Responses to all comments can be found in the following paragraphs.

NMA Comment #1: EPA proposes to approve all of CCAQR sections 58 and 59 (and corresponding provisions of section 12) concerning offsets. However, not all of those requirements are intended to implement the Federal CAA NSR program, nor does DAQEM submit them for that purpose. DAQEM intends only subsection 59.1 ("Federal Offset Requirements") to be part of the SIP revision, not subsection 59.2 ("Local Offset Requirements"). Similarly, subsections 59.3, 59.4, and 59.5 contain certain provisions that are meant to be federally enforceable (*i.e.*, part of the SIP), and some that are exclusively local. Subsection 12.2.6, or portions thereof, also appears to be a requirement, in whole or in part, that is not intended for CAA NSR purposes and is not subject to this approval. EPA and DAQEM should identify with precision which requirements of DAQEM NSR rules are to be federally approved and enforceable and which are not; this clarified rule should then be subject to notice and comment before final SIP approval. As a consequence, the approval should be suspended and subject to notice and comment after the clarifications are made public.

Response to NMA Comment #1: NMA is correct in that certain provisions of the submitted NSR program were not intended to be approved as part of the Nevada SIP. By letter dated July 12, 2004, from Jolaine Johnson, Acting Administrator, Nevada Division of Environmental Protection, to Deborah Jordan, Director, Air Division, U.S. EPA—Region IX, DAQEM and the State requested EPA to withdraw the approval of subsection 59.2 as part of the SIP. As a result, we no longer have authority to act on subsection 59.2 ("Local Offset Requirements"), and subsection 59.2 will therefore not become federally enforceable. We do not believe that the State's withdrawal of subsection 59.2 necessitates a new round of notice and comment under the Administrative Procedure Act because we did not rely on subsection 59.2 in our June 2, 2004 proposed rule. That is, we did not rely on subsection 59.2 to satisfy any Federal NSR (nonattainment NSR or PSD) requirements nor to justify our proposed partial approval of the submitted NSR program under either sections 110(l) or 193 of the Act. The withdrawal of subsection 59.2 does not change our conclusion or the underlying rationale set forth in the proposed rule in any way.

We note that the submitted NSR program contains a revised minor (Clark County Air Quality Regulations use a related term, "non-major") stationary source review program and a revised major stationary source review program (nonattainment NSR and PSD) and that both minor and major source review programs are required under the Act. See sections 110(a)(2)(C), 161, and 172(c)(5) of the Act. Furthermore, for SIP revisions to be approved by EPA, SIP revisions must also comply with certain other requirements of the Act, such as section 110(l), which prohibits approval of SIP revisions that would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the Act. Thus, certain requirements in the submitted NSR program may not be needed to satisfy CAA NSR requirements for major sources and major modifications, but are necessary to provide EPA with the basis to approve the overall NSR program revision to supercede the existing SIP-approved Clark County NSR program under section 110(l). Thus, all of the provisions in the NSR submittal dated October 7, 2003, with the exception of those specific provisions which EPA proposed to disapprove and with the added exception of subsection 59.2 discussed above, are necessary to provide EPA with the basis to approve the updated NSR program, and, upon EPA approval, will become federally enforceable.

NMA Comment #2: An additional and separate source of confusion is the lack of adequate posting and public access to the relevant NSR requirements. As of the date of these comments, DAQEM's Web site posts the text of its section 0, 12, 58, and 59 requirements as regulations adopted on December 4, 2001. The EPA proposed rule for Clark County's SIP approval is based on DAQEM regulations EPA states were adopted on October 7, 2003 and which are available only by written request. The problem is that the text of the Clark County rules EPA apparently proposes to approve into the SIP is substantially different from the text of the DAQEM rules posted on DAQEM's Web site. To compound the problem, EPA has stated "While we can only act on the most

recently submitted version, we have reviewed materials provided with previous submittals." Neither the proposed rule itself nor the Technical Support Document (TSD) explain what are the "materials" or "previous submittals" on which EPA relies. As a result, public comment on the appropriateness of such reliance is impossible. Before finalizing the SIP approval, EPA and DAQEM should identify the specific regulatory texts which form the basis for EPA's proposed SIP approval; these should be made available to the public. To the extent EPA relies on any materials other than these regulations, the proposed SIP approval should identify the specific material and the nature of EPA's reliance on it.

Response to NMA Comment #2: We disagree with NMA's contention that our proposed action lacked adequate public access to the relevant materials. The specific regulatory texts which form the basis for EPA's proposed SIP action are as follows: CCAQR sections 0, 11, 12, 52.8, 58, and 59 (not including subsection 59.2, as discussed above in Response to NMA Comment #1), as adopted by the Clark County Board of County Commissioners on October 7, 2003 and as submitted to EPA by NDEP on October 23, 2003; and Nevada Administrative Code (NAC) section 445B.22083, as adopted by the State Environmental Commission on March 29, 1994 and submitted to EPA by NDEP on November 20, 2003. With the exception of subsection 59.2, this is the exact list identified in Table 1 of our proposed rule. See 69 FR at 31057. Also, in our proposed rule, at 69 FR 31056, column 3, we indicated that members of the public could inspect copies of the State's submittals, EPA's technical support documents, and other supporting documentation at EPA Region IX offices, could inspect copies of the State's submittals at NDEP offices in Carson City, or could inspect copies of the revised Clark County NSR rules at DAQEM offices in Las Vegas. We did not rely on DAQEM's Web site for public access to the relevant materials.

In the proposed rule, at 69 FR 31057, we describe the various Clark County NSR submittals sent to us pursuant to the Act, as amended in 1990, and our actions related to them. In the discussion in the proposed rule, we explain that our approval of previous Clark County NSR submittals (then contained in Clark County Health District Air Pollution Control Regulations sections 0, 12, and 58) was vacated in *Hall* v. *EPA* (273 F.3d 1146, 9th Cir. 2001), that we received a revised Clark County NSR program on February 25, 2003 that included the then-current CCAQR sections 0, 11, 12, 58, and 59, as adopted on December 4, 2001, but that this February 25, 2003 submittal was superceded by the Clark County NSR submittal dated October 23, 2003. Further, our proposed rule indicates that the October 23, 2003 submittal of the Clark County NSR rules is the one that forms the basis for our proposed action. We rely on superceded SIP submittals only to the extent that they inform our understanding of the evolution of the Clark County NSR program from the version that formed the basis for our prior SIP approval action (*see* 64 FR 25210, May 11, 1999), which was subsequently vacated in the *Hall* decision, through the adoption in October 2003 by Clark County of the version of the NSR program that formed the basis for our proposed action. We believe that we described this regulatory history in sufficient detail in our June 2, 2004 proposed rule to have allowed for informed public comment on our proposed action.

NMA Comment #3: Clark County's NSR rules and EPA's approval incorporate an unnecessarily and inappropriately stringent 2 to 1 offset ratio requirement for major sources and major modifications involving CO or PM–10. EPA explains in the TSD that CAA requirements to show noninterference with reasonable further progress would be satisfied at ratio of 1 to 1. Thus, the 2 to 1 offset ratio is unnecessarily stringent, particularly in light of the additional respects in which the new Clark County NSR rules have significantly increased the rate of progress to attainment. Accordingly, the level of offsets which may be "federally enforceable" as part of the applicable SIP should be limited to offsets in the ratio of 1 to 1 but not any higher ratio.

Response to NMA Comment #3: In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the minimum requirements of the Clean Air Act and our regulations. Section 173(c)(1) of the Act specifies that emissions "shall be offset by an equal or greater reduction, as applicable, in the actual emissions of such air pollutant from the same or other sources in the area." The Act specifically provides discretion to establish an offset ratio in an amount that is greater than a ratio of 1 to 1. Accordingly, the State's offset program is consistent with, and meets the minimum requirements of, the Act. Moreover, our rationale for approval of the submitted NSR program (and supercession of the existing NSR program) under sections 110(l) and 193 of the Act rely in part on the submitted program's 2 to 1 offset ratio. See the proposed rule at 69 FR at 31061, column 3 (section 110(l) evaluation for CO); 69 FR at 31062, column 1 (section 110(l) evaluation for PM–10); and 69 FR 31064 (section 193 evaluations for CO and PM–10). In this regard, we note that the appropriate comparison for the purposes of sections 110(l) and 193 is between the submitted NSR program and the SIP-approved NSR program (from the early 1980's), not the locally-adopted (but not SIP-approved version) of the NSR program (adopted in December 2001) that is being administered by DAQEM. (The submitted Clark County NSR program (adopted in October 2003) will not be in effect until 30 days after we publish our final approval of the program in the **Federal Register**.)

NMA Comment #4: EPA proposes to retain in the approved SIP 33 definitions from section 1 ("Definitions") of the former Clark County rules. EPA states that while these definitions may not affect this NSR action, they may be needed for other existing non-NSR SIP rules. We request that these definitions be deleted because retaining them may create confusion. Two examples include the terms "minor source" and "source of air contaminant." An additional and separate source of confusion is that the numeric citations for the defined terms do not correspond to the number citations currently used by DAQEM. The proposal to retain section 1 definitions should be withdrawn and all terms should be revised and consolidated into a single regulation that would then be made part of the SIP.

Response to NMA Comment #4: We agree that EPA's approval of a second Clark County rule (*i.e.*, CCAQR section 0) entitled "Definitions" into the SIP is not ideal and may cause confusion. However, there should be no confusion in the NSR context because, upon the effective date of our final approval, new or modified sources in Clark County will be subject to the requirements in CCAQR sections 12 and 59 that rely on the ambient standards in CCAQR section 11, the credits in section 58, and the terms defined in CCAQR section 0, such as "nonmajor stationary source" (*see* paragraph (c) under "stationary source" in section 0) and will not be subject to the requirements in the Clark County District Board of Health Air Pollution Control Regulations section 15 (referred to herein as "existing SIP section 15" or "SIP section 15") that rely on the ambient standards in Board of Health Air Pollution Control Regulations section 11 and the terms defined in existing SIP section 1, such

as "minor source" and "significant," since, at that time, SIP section 15 will be entirely superceded in the SIP by CCAQR sections 12 and 59.

For the reasons stated in our proposed rule, at 69 FR at 31067, we continue to believe that the SIP should retain 33 specific defined terms from existing SIP section 1 because other Clark County rules currently approved in the SIP continue to rely on these terms. Clark County and the State of Nevada have not submitted the updated versions (that rely on the defined terms in CCAQR section 0 rather than SIP section 1) of these SIP rules, and until that submittal is made and approved by EPA as a SIP revision, we must retain the 33 specific defined terms from existing SIP section 1 on which these SIP rules rely. Specific examples of existing SIP rules that rely on certain definitions in existing SIP section 1 include the following:

- Clark County District Board of Health Air Pollution Control Regulations (*i.e.*, "existing SIP" or "SIP") section 2 relies on the following terms defined in SIP section 1: "air contaminant," "air pollution control committee," "board," and "source of air contaminant;"
- Existing SIP section 4 relies on the following terms defined in SIP section 1: "air contaminant" and "source of air contaminant;"
- Existing SIP section 5 relies on the following term defined in SIP section 1: "smoke;"
- Existing SIP section 18 relies on the following terms defined in SIP section 1: "minor source" and "single source" and the term "minor source" relies on the term "significant;" and
- Existing SIP section 23 relies on the following terms defined in SIP section 1: "affected facility," and "integrated sampling."

Lastly, while we recognize that there is a difference between the numeric references for specific defined terms in the version of section 1 that DAQEM provides on its website and those cited by EPA in our June 2, 2004 proposed rule, the numeric references from the version of section 1 that we cite in the proposed rule are those that we incorporated by reference into the Code of Federal Regulations (CFR) and, as such, reflect the EPA-approved version of SIP section 1. See 40 CFR 52.1470(c)(17)(i) and (ii) and 40 CFR 52.1470(c)(24)(iii) and see also the rules posted for Clark County, Nevada on our Web site at *http://www.epa.gov/region09/air/sips.* The version of section 1 that Clark County posts on its Web site appears to be a "cleaned-up" version of SIP section 1 in which revision marks have been removed and for which the terms have been renumbered to reflect added and deleted terms. In contrast, the version of SIP section 1 cited by EPA in the proposed rule represents an amalgam of terms approved by EPA at different times in 1981 and 1982. See the related discussion in the proposed rule at 69 FR at 31057, column 1.

NMA Comment #5: By operation of federal law, a portion of Clark County is still designated as a serious nonattainment area for CO; as a result, NSR requirements for nonattainment areas apply. However, the reality is that control of mobile and stationary sources has substantially improved air quality in Clark County, to the point that it now qualifies for redesignation as an attainment area for CO. Such redesignation is now in order. On January 28, 2003, EPA declared that no exceedances of the CO standard had been recorded in Clark County since 1998. Stationary sources are an insignificant source of CO emissions in Clark County and the burdensome nonattainment regulation of stationary sources is no longer necessary to show progress towards or to maintain air quality standards. We therefore request that EPA redesignate the area as expeditiously as possible and, with DAQEM, revise the NSR rules for stationary sources accordingly.

Response to NMA Comment #5: We agree that certain changes in NSR program requirements are allowed once an area has been redesignated from nonattainment to attainment. However, the Las Vegas Valley CO nonattainment area cannot be redesignated to attainment until all of the redesignation criteria set forth in section 107(d)(3)(E) of the Act have been met. In our January 28, 2003 proposed rule on the serious area CO plan (68 FR 4141 at 4142), we cited the record of clean data over recent years from the DAQEM CO monitoring network, but that action did not propose a finding of CO attainment (but did propose approval of the Las Vegas Valley CO attainment plan and vehicle inspection and maintenance program). We expect to propose an attainment finding for CO in the near future, but we note here such a finding is but one of the five criteria that must be met before a CO nonattainment area can be redesignated to attainment. Another criterion relates to approval by EPA of a CO maintenance plan, which EPA understands to be currently under development by Clark County. Upon redesignation, EPA will consider any submitted changes to the requirements under Clark County's NSR program for new or modified stationary sources of CO in light of the County's future CO maintenance strategy.

NMA Comment #6: EPA proposes to evaluate the submitted Clark County NSR program on the basis of Federal NSR regulations that are no longer in effect. This approach creates completely unnecessary and unjustified confusion. The Clark County NSR program should be evaluated based on current Federal NSR regulations. Review and evaluation of Clark County's NSR program based on current Federal NSR regulations is mandated by the CAA.

Response to NMA Comment #6: Our June 2, 2004 proposed rule explains that we evaluated the submitted NSR program against the Federal NSR regulations that were in effect when the rules were being revised to address issues raised by EPA in the wake of the Hall decision. See 69 FR at 31058, column 3. We disagree that this approach creates unnecessary confusion, and we disagree that the Act or our regulations prohibits us from taking this approach. One significant, on-going source of confusion that will be resolved by this final rule will be the need by DAQEM to reconcile the NSR program requirements under the County's adopted (but not EPA-approved) Air Quality Regulations with those under the NSR program approved by EPA as part of the SIP. As it stands now, new or modified stationary sources in Clark County must comply with two sets of NSR rules: current, locally-adopted CCAQR sections 12 and 59 (and related provisions in sections 0, 11, and 58) and SIP-approved section 15 (and related provisions in SIP sections 1 and 11). The submitted NSR program represents a comprehensive revision to Clark County's EPA-approved NSR program from the early-1980's (and contained in sections 1, 11, and 15), and as such, compliance with both sets of rules is at the very least challenging and at worst confounding for the regulated community. Today's final rule will close this "SIP gap" and thereby ease the associated regulatory confusion.

The proposed rule indicated (69 FR 31057, column 3) that our approach does not establish any precedent for evaluating whether a proposed NSR SIP fulfills the requirements of the revised NSR regulations that were published on December 31, 2002. Furthermore, we indicated at 69 FR at 31058, that the NSR revision that is the subject of this action does not relieve Clark County, like other State and local agencies, from adopting and submitting revisions to its SIP-approved NSR rules implementing the minimum program requirements set forth in the revised Federal NSR regulations (published on December 31, 2002) no later than January 2, 2006. Today's final rulemaking simply means

that the NSR revisions that are due by January 2, 2006 will be using CCAQR sections 0, 11, 12, 58, and 59, as submitted on October 23, 2003, as the SIP baseline NSR regulatory program instead of the 1980's-era sections 1, 11, and 15. None of the statutory or regulatory provisions cited by NMA require EPA to wait several more years to approve all of the necessary NSR revisions in a single rulemaking.

DAQEM Comment #1: In the discussion of NO_X requirements (69 FR 31063), the statement is made that section 12 of the Clark County regulations represents a relaxation of the "control technology requirements for new or modified sources (from LAER to BACT)." In fact, the NSR regulation in the current SIP contains no provisions for NO_X nonattainment areas and contains no control technology requirements for NO_X (Section 15.14). Thus, superseding that section with the Section 12 imposition of a BACT requirement is actually a strengthening of the NSR rules.

Response to DAQEM Comment #1: We agree that the existing SIP NSR program (sections 1, 11, and 15) has no provisions for NO_X nonattainment areas, but we disagree with DAQEM's conclusion that the existing SIP NSR program contains no control technology requirements for NO_X. Subsection 15.13.1 sets forth the existing SIP NSR requirements for "all new, reconstructed or modified sources" of NO_X "throughout Clark County" and thereby establishes a control technology requirement, at the very least, of best available control technology (BACT) (see subsection 15.13.9.2). Furthermore, we concluded in the proposed rule that SIP subsections 15.14.1 ("all new, or reconstructed, or modified stationary sources * * * of * * * particulate precursors * * * in the Las Vegas Valley * * *") and 15.14.1.3 ("Each new or modified source * * * shall incorporate * * * lowest achievable emission rate.") tighten the control technology requirement (*i.e.*, to the lowest achievable emission rate (LAER)) for new or modified NO_X sources in Las Vegas Valley, not on the basis of NO_X as a precursor to nitrogen dioxide (for which the entire county is attainment), but rather as a "particulate precursor," which is defined in section 1 as "a gaseous air contaminant which can undergo gas-to-particle conversion processes in the ambient air to form particulate matter. Examples: (1) Ammonia, sulfur dioxide, chlorine, and nitrogen oxides can be converted to ammonium sulfate, ammonium nitrate, and ammonium chloride. (2) Volatile organic compounds can be converted to organic and elemental carbon particulate." See the subsection entitled "Nitrogen Dioxide SIP Planning Considerations," in the Technical Support Document (TSD) for our proposed action on the submitted Clark County NSR program.

The difference between DAQEM's interpretation and EPA's interpretation of the NO_X requirements in Las Vegas Valley under the existing SIP NSR program highlights the ambiguity of the term "particulate precursor." In our June 2, 2004 proposed rule, we did not recognize this existing SIP term as ambiguous, and evaluated the NO_X control requirements in Las Vegas Valley accordingly, but upon reconsideration in light of DAQEM's comment, we have concluded that the term "particulate precursor," as defined in section 1, is ambiguous because the term refers to examples of the types of gaseous air contaminants that can theoretically lead to secondary particulate formation (*i.e.*, can be particulate precursors) rather than to a list of gaseous air contaminants that are in fact significant precursors to particulate under the actual ambient conditions found in Las Vegas Valley.[3]

Given the ambiguity we now recognize in the term "particulate precursor," as used for the purposes of the existing SIP NSR program, we conclude that, while it is clear that at least BACT-level of control is required for all new or modified NO_X sources throughout Clark County, it is unclear whether the most stringent control technology requirement (LAER) applies to new or modified NO_X sources in Las Vegas Valley under the existing SIP NSR program. However, this uncertainty only strengthens our conclusion from the proposed rule, that despite the incremental relaxation in the control technology requirement in Las Vegas Valley for new or modified NO_X sources (a relaxation that we now recognize as uncertain), supercession of the existing SIP NSR program by the submitted NSR program would not interfere with continued attainment of the nitrogen dioxide NAAQS or any other applicable requirement of the Act. See our proposed rule at 69 FR at 31063, column 1.

NEC Comment #1: Two of the applicable requirements that would be violated with the approval of the submitted NSR program as a SIP revision are CAA sections 116 and 193. The logic of sections 116 and 193 is very clear. When an existing plan fails to result in the attainment of the NAAQS, no subsequent revision of the plan's requirements can be less stringent than the rules that have already failed to result in attainment. With EPA's continued assistance, DAQEM is again proposing regulations that are less stringent than those that have already failed to result in attainment of the NAAQS. EPA has failed to address section 116 requirements in their entirety in the proposed rule and TSD and proposes approval of the submitted NSR program despite an admission of relaxations in its section 193 discussion of CO and PM–10.

Response to NEC Comment #1: NEC contends that CAA section 116 requires that SIP revisions that would supercede pre-existing EPA-approved SIP rules be no less stringent than those EPA-approved SIP rules individually or collectively. NEC contends that EPA has ignored the requirements of CAA section 116, but NEC misreads CAA section 116. Section 116 provides:

> "Except as otherwise provided in sections 119(c), (e), and (f) (as in effect before the date of the enactment of the Clean Air Act Amendments of 1977), 209, 211(c)(4), and 233 (preempting certain State regulation of moving sources) nothing in this Act shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce (1) any standard or limitation respecting emissions of air pollutants or (2) any requirement respecting control or abatement of air pollution; except that if an emission standard or limitation is in effect under an applicable implementation plan * * * such State or political subdivision may not adopt or enforce any emission standard or limitation which is less stringent than the standard or limitation under such plan * * *."

NEC's reading of section 116 as imposing requirements for SIP revisions or a blanket prohibition on relaxation of SIPs would be inconsistent with CAA sections 110(l) and 193, which specify the criteria to be applied in evaluating SIP revisions. In pertinent part, CAA section 110(l) provides:

> "The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of this Act."

CAA section 110(l) does not preclude SIP relaxations but requires that relaxations not interfere with specified requirements of the Act including requirements for attainment and reasonable further progress. Thus, if an area can demonstrate that it will continue to attain or maintain the NAAQS and meet any applicable

[3] In a recent final rule on the Las Vegas Valley PM–10 attainment plan, we concluded that major sources of PM–10 precursors such as nitrogen oxides and sulfur dioxide do not significantly contribute to violations of the PM–10 standards. See 69 FR 32273, at 32274, column 1 (June 9, 2004).

reasonable further progress goals or other specific requirements, it may revise SIP provisions, even if the revision amounts to a relaxation. *See Hall* v. *EPA*, 273 F.3d 1146, 1160 (9th Cir. 2001) (explaining that to make a finding under CAA section 110(l), "EPA must be able to conclude that the particular plan revision before it is consistent with the development of an overall plan capable of meeting the Act's attainment requirements."). Our proposed rule provides a detailed evaluation of the submitted NSR program under section 110(l). We have compared the submitted NSR program and the EPA-approved (*i.e.*, existing SIP) NSR program that it would replace and evaluated the effect of the changes to the NSR program within the context of ambient air quality trends and compliance with CAA attainment planning requirements. We conclude that replacement of the existing SIP NSR program with the submitted NSR program would not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the Act. See 69 FR at 31060–31063.

Even if a SIP revision is approvable under section 110(l), CAA section 193 imposes additional restrictions on modifications to certain SIP control requirements in nonattainment areas that were in effect prior to the 1990 Clean Air Act Amendments ("pre-1990 control requirements"). In pertinent part, CAA section 193 provides:

> "No control requirement in effect, or required to be adopted by an order, settlement agreement, or plan in effect before the date of the enactment of the Clean Air Act Amendments of 1990 in any area which is a nonattainment area for any air pollutant may be modified after such enactment in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant."

Thus, while NEC's interpretation of CAA section 116 as providing a broad prohibition against SIP relaxations is erroneous, CAA section 193 does limit nonattainment areas from backsliding from the emissions reductions achieved by pre-1990 control requirements. In our proposed rule, we provide a detailed evaluation of the submitted NSR program under CAA section 193. See 69 FR at 31063–31065. In that evaluation, which covers the two pollutants (CO and PM–10) for which Las Vegas Valley was designated nonattainment at the time of the 1990 CAA Amendments and remains so designated, we indicate specific instances where the requirement under the submitted NSR program, such as the control technology requirement for minor sources, would be less stringent (BACT) than under the existing SIP NSR rules (LAER). Thus, we acknowledge the relaxation of certain program elements, but our evaluation under CAA section 193 does not end there. We evaluated the NSR programs as a whole taking into account all of the programs' elements (such as the control technology requirements, major stationary source thresholds, offset ratios, etc.) in concluding that the submitted NSR program will result in equivalent or greater mitigation of CO and PM–10 emissions increases due to new source growth relative to the existing SIP NSR program.[4]

Thus, in summary, EPA concludes that although the SIP revision does relax certain CO and PM–10 provisions of the NSR program, the SIP revision as a whole satisfies section 110(l) because it is consistent with the area's overall control strategy, which takes into account ambient trends and CAA planning requirements and which was recently approved by EPA in separate rulemakings (see response to NEC comment #6), and it satisfies section 193 because the submitted NSR program provides equivalent or greater mitigation of emissions increases compared to the existing SIP NSR program.

NEC Comment #2: Clark County was recently declared a nonattainment area for ozone. The relaxations in proposed controls for the ozone precursor pollutants (volatile organic compounds (VOC) and NO_X) that are in the proposed SIP are a relaxation from the existing SIP. The situation is similar to the relaxations for CO and PM–10. Instead of dealing with the issue, EPA has chosen to keep that relaxation from the discussion.

Response to NEC Comment #2: Contrary to NEC's contention, the regulatory context for review of the submitted Clark County NSR program is different for ozone than for CO or PM–10. For the latter pollutants, the nonattainment designations were re-affirmed by the 1990 CAA Amendments and continue to the present day. In contrast, for ozone, prior to the 1990 CAA Amendments, implementation of an effective control strategy for the only ozone NAAQS then in existence (the 1-hour ozone NAAQS) led to our redesignation of Las Vegas Valley from nonattainment to attainment. Las Vegas Valley continues to attain the 1-hour ozone NAAQS to the present day. In 1997, EPA promulgated a revised NAAQS for ozone based on an 8-hour average. Following significant legal challenges to the 8-hour ozone NAAQS, we promulgated designations earlier this year for all areas of the country for the 8-hour ozone NAAQS, and Clark County was one of the areas that we designated as nonattainment. (The 1-hour ozone NAAQS continues to be in effect until June 2005 when it will be revoked.) In our proposed rule, we acknowledge this recent designation for the 8-hour ozone NAAQS at 69 FR 31062, column 3. More recently, we deferred the effective date of the designation until September 13, 2004 to allow the State the opportunity to provide us with information that would support a nonattainment area boundary other than the county boundary. See 69 FR 34076 (June 18, 2004). A nonattainment designation triggers certain CAA requirements and will lead to future SIP revisions that must be submitted prior to dates yet to be established by EPA.

We provide a section 110(l) evaluation in our June 2, 2004 proposed rule of the submitted NSR program with respect to the ozone NAAQS. See 69 FR at 31062–31063. In that discussion, we acknowledge certain incremental relaxations in the VOC control technology requirement but, similar to our discussion of PM–10 and CO, we conclude that other aspects of the overall NSR submittal provide us with the basis to conclude that the submitted NSR program (and supercession of the existing SIP NSR program) would not interfere with attainment and reasonable further progress towards attainment of the ozone NAAQS, or any other requirement under the Act. In support of this conclusion in the case of the ozone NAAQS, we point to the following: (1) The submitted NSR program would replace a "potential-to-potential" test with the "actual-to-potential" test for evaluating proposed stationary source modifications with the result that a greater number of modifications would be subject to new source review (and thereby to the control technology requirements, etc.) under the submitted NSR program than under the existing SIP NSR program (see 69 FR 31061, column 1); (2) significant Clark County non-NSR SIP rules and EPA motor vehicle tailpipe and fuel regulations that regulate VOC emissions would be unaffected by this action (see 69 FR 31062, column 3); (3) the

[4] CAA section 193 uses the phrase "equivalent or greater emission reductions," but, in the context of NSR programs, which are not specifically designed to produce emissions reductions themselves but to assure that stationary source growth occurs in a manner that is consistent with an area's overall control strategy, the phrase means equivalent or greater mitigation of emissions increases due to new stationary source growth.

relaxation under the submitted NSR program with respect to the VOC control technology requirement for minor VOC sources in Las Vegas Valley would be incremental (LAER to BACT) instead of total (LAER to uncontrolled) (see, generally, 69 FR at 31064, column 2); and (4) there would be an incremental strengthening (BACT to LAER) under the submitted NSR program of the VOC control technology requirement for new or modified major VOC sources in areas generally upwind of Las Vegas Valley (see 69 FR 31062).

Although the CAA section 110(l) evaluation summarized above was prepared in connection with the 1-hour ozone NAAQS, the same rationale also applies to the 8-hour ozone NAAQS. Thus, in summary, EPA concludes that although the SIP revision does relax certain VOC provisions of the NSR program, the SIP revision as a whole satisfies section 110(l) because it is consistent with the area's EPA-approved ozone control strategy, and because, given the trade-offs concerning VOC requirements between the two programs as discussed above and the inherent difficulty in determining with precision the net effect on VOC emissions of replacement of the existing SIP NSR program with the submitted NSR program (which would depend upon assumptions regarding the number and potential-to-emit of future new and modified sources in addition to their proposed locations within Clark County), we believe that it is reasonable to conclude that the submitted NSR program provides equivalent or greater mitigation of VOC emissions increases compared to the existing SIP NSR program.

The State and Clark County developed the approved ozone control strategy to attain the 1-hour ozone NAAQS, but it also serves as the base control strategy from which the State and Clark County will develop an 8-hour ozone control strategy. EPA will be establishing the schedule that the State and Clark County must follow to develop an 8-hour control strategy in a final rule implementing the 8-hour ozone NAAQS.

NEC Comment #3: EPA accepts relaxations in control technology requirements by discussing NSR offset requirements. Offset requirements are completely different than control requirements. Over the past 20+ years since approval of the existing SIP NSR program, neither EPA nor DAQEM have required or enforced the offset requirement in Clark County, despite numerous sources that have triggered the requirement, and for that reason, the public does not have much confidence that either will now start enforcing it. As a result, the offsets requirements that EPA relies on in the proposed approval amount to "paper only" emissions reductions.

Response to NEC Comment #3: In our proposed rule, we rely on the offset requirements in the submitted NSR program to mitigate the higher level of emissions from new or modified sources that might otherwise occur from a more stringent control technology requirement (*e.g.*, LAER for minor sources) than the submitted program (BACT for minor sources). We also note the improved regulatory structure of the new NSR rule that clearly specifies the "quality" of offsets required. By "quality," we refer to the requirements, such as those set forth in CCAQR section 59, subsection 59.4, that emission reductions used to satisfy a Federal offset requirement must be surplus, permanent, quantifiable and federally enforceable, as those terms are defined in CCAQR section 0.[5] From a practical standpoint, the added regulatory clarity should enhance compliance with the requirements by permit applicants as well as enforcement of those requirements by DAQEM and EPA.

NEC Comment #4: The discussion regarding Clark County's local, road paving, and offset credit program fails to discuss the fact that the program has been a misleading program all along. The offset credits under the local program cannot be replicated because they are not real. The local offset program was never intended to reduce air pollution. Despite this, the EPA and DAQEM continue to support the local emission reduction credit program used by favored sources to evade Federal offset requirements that EPA and DAQEM say are part of the submitted NSR rules.

Response to NEC Comment #4: As discussed above in response to NMA comment #1, DAQEM and the State requested EPA to withdraw the approval of subsection 59.2 as part of the SIP. As a result, we no longer have authority to act on subsection 59.2 ("Local Offset Requirements"), and subsection 59.2 will therefore not be approved into the SIP. Subsection 59.2 (specifically, subsection 59.2.7.1) contains the provisions allowing use of Road Paving Credits as PM–10 offsets. In accordance with CCAQR regulations (see CCAQR subsection 59.2.1), the Road Paving Credits are not available for use by new major sources or major modifications of PM–10 to comply with Federal offset requirements. We are therefore not addressing the issue of whether those credits would hypothetically be valid in meeting Federal offset requirements. As we state in response to NEC comment #4, we expect that the more detailed specifications in submitted CCAQR section 59, subsection 59.4 (and the related definitions set forth in CCAQR section 0) regulating the creation and use of emissions reductions for the purposes of satisfying the offset requirements will enhance both compliance and enforcement efforts compared to the existing SIP NSR program.

NEC Comment #5: One way to ascertain if reasonable further progress has been made is to review air quality in 1980 and compare it to today. The Las Vegas Valley was in nonattainment for particulate matter, ozone, and CO in 1980. As of the writing of this comment, some of the rules were changed, but the valley remains in nonattainment for all three pollutants.

Response to NEC Comment #5: The Clean Air Act defines "reasonable further progress" as "such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date." See CAA section 171(1). Thus, reasonable further progress (RFP) is judged from an emissions standpoint and does not correlate directly to ambient concentrations, which reflect meteorological conditions that vary from year to year as well as emissions trends. However, over the long term, as NEC suggests, the trend in concentrations should be downward if there has in fact been "reasonable further progress." In Las Vegas Valley, as discussed on a pollutant-by-pollutant basis in the following paragraphs, the monitoring data shows improvement for all three pollutants for which Las Vegas Valley is, or was, nonattainment, *i.e.*, CO, particulate matter (TSP and PM–10), and (one-hour) ozone, relative to conditions that prevailed in the valley in the late 1970's and early 1980's.

Carbon Monoxide. In the late 1970's and early 1980's, the *1982 Air Quality Implementation Plan Update* (June 1, 1982) indicates that the number of days per year during which an exceedance of the CO NAAQS was recorded was about

[5] Section 15, subsection 15.14.4.3.3, appears to establish certain requirements for creation and use of offsets under the existing SIP NSR program. However, a typographical error in the listing of this particular subsection in both our proposed rulemaking (see 47 FR 7267, February 18, 1982), and final rulemaking (see 47 FR 26620, June 21, 1982) cast doubt on the validity of EPA's approval of that subsection into the SIP. Also, see 40 CFR 52.1470(c)(24)(iii).

30. In contrast, since 1998, there have been no recorded exceedances of the CO NAAQS. See our proposed approval of the 2000 Las Vegas Valley serious area CO SIP at 68 FR 4141, at 4142, column 1 (January 28, 2003). The carbon monoxide control strategy has relied primarily on Federal motor vehicle emissions standards, wintertime State and local fuel specifications, and an "enhanced" vehicle inspection and maintenance program to improve CO conditions in Las Vegas Valley. In our June 2, 2004 proposed rule, we discuss how the submitted NSR program is consistent with the CO control strategy and the serious area CO SIP (which we recently approved). See 69 FR at 31061, column 3 and 31062, column 1.

Particulate Matter. During the 1977 through 1979 period, the number of days per year during which an exceedance of the particulate matter NAAQS (then defined in terms of total suspended particulate (TSP)) was recorded averaged 14 based on summaries of monitoring data compiled for the *Revised Air Quality Implementation Plan* (November 18, 1980). The particulate matter NAAQS was revised to refer to PM–10, rather than TSP, in 1987, so a direct comparison between current conditions and those in the late 1970's is not possible. Nonetheless, a comparison between the older TSP data and the current PM–10 data provides a rough, if imprecise, basis for evaluating relative progress in reducing particulate matter concentrations in the valley over time. In that regard, we note that, during the 1997 through 1999 period, the number of days per year during which an exceedance of the PM–10 NAAQS was recorded averaged 10 based on data compiled for the *PM–10 State Implementation Plan for Clark County* (June 2001). Thus, while progress in attaining the particulate matter NAAQS has been slow, the approved 2001 PM–10 attainment plan is the first Las Vegas Valley plan to contain a comprehensive set of regulations addressing fugitive dust sources, the predominant sources of ambient PM–10 in the valley. We approved the fugitive dust regulations, CCAQR sections 90 through 94, as part of the final rule approving the 2001 Las Vegas Valley PM–10 attainment plan. See 69 FR 32273 at 32276 (June 9, 2004). Also as part of the 2001 PM–10 attainment plan approval, we approved the demonstration of attainment of the PM–10 NAAQS in Las Vegas Valley by the end of 2006. In our June 2, 2004 proposed rule, we discuss how the submitted NSR program is consistent with the PM–10 control strategy and serious area PM–10 attainment plan (which we recently approved). See 69 FR at 31062, columns 1 and 2.

Ozone. During the 1980 through 1983 period, the number of days per year in which an exceedance was recorded varied from 1 to 14 based on data contained in the *Air Quality Implementation Plan, Post 1982 Update* (July 1984). By the mid-1980's, the 1-hour ozone NAAQS had been attained in Las Vegas Valley, and EPA redesignated the area as an "attainment" area for the 1-hour ozone NAAQS in 1986. See 51 FR 41788 (November 19, 1986). The ozone control strategy relied primarily on Federal motor vehicle emissions standards and local stationary source regulations, including, among others, Clark County District Board of Health Air Pollution Control Regulation Section 33 ("Chlorine in Chemical Processes"). Our proposed rule on the submitted NSR program, at 69 FR at 31062, column 3, notes that, since 1986, peak ozone levels have remained relatively constant at 0.09 parts per million (ppm) to 0.10 ppm, but peak levels in recent years have approached the 1-hour ozone NAAQS of 0.12 ppm. In our proposed rule, we discuss how the submitted NSR program is consistent with the 1980's-era 1-hour ozone control strategy. See 69 FR at 31062, columns 2 and 3, and 31063, column 1.

As noted in response to NEC comment #2, EPA recently designated Clark County as a nonattainment area for the 8-hour ozone NAAQS (promulgated by EPA in 1997) but deferred the effective date for that designation until September 13, 2004. Upon the effective date of the new designation, certain changes in the Clark County NSR program will be required under either the submitted or existing SIP NSR program (*e.g.*, LAER and offsets for VOC and NO_x major sources and major modifications throughout Clark County or designated subportion thereof).

NEC Comment #6: DAQEM has yet to produce an accurate and comprehensive emissions inventory for the nonattainment area. DAQEM uses air quality calculations that are not credible in order to justify the desired paper-only end result. For example, the emissions inventory from the "moderate area" plans from the mid-1990's show little resemblance to the current "serious area" plans. A specific instance is demonstrated by the PM–10 emissions estimates from vacant land that doubled between the "moderate area" PM–10 plan, which was withdrawn, and the "serious area" PM–10 plan. It is also not credible that the plans project lower emissions despite a population that has tripled in 20 years. Also, certain emissions sources are completely missing from the inventories, such as new power plants and a proposed airport.

The amount of industry emissions has increased since 1979 and for that reason alone, LAER triggers should not be relaxed. We cannot go from LAER to less than that without having an impact on attainment. PM–10 emissions have not been reduced in reality. DAQEM has utilized drastically lower emission factors to estimate emissions. There is no justification for the data presented in the proposed approval. Industry has grown but the emissions inventory does not show the same increase in emissions since the emission factors have been reduced.

Another trick DAQEM has mastered over the years is the manipulation of the choice of monitoring sites and management's ability to shut down monitors just as they appear to reach the level of NAAQS exceedances. DAQEM places only the official monitors in areas of the valley that have proven through previous monitoring to rarely report exceedances.

According to CAA section 188(e), the "serious area" PM–10 attainment date may also be extended if the rules are followed. Clark County has not followed the rules. One criteria for an extension is that the plan for the area includes the most stringent measures that are included in the implementation plan of any State or are achieved in practice in any State. The EPA has admitted that many of the control and offset requirements of the proposed plan are not as stringent as the existing plan. DAQEM has noted that most sources in the nonattainment area are non-major sources. It is these non-major sources that represent the majority of emissions whose emissions are being relaxed the most by the proposed regulation. For all of the reasons herein, we object to the proposed 5-year extension to 2006 for attainment.

Response to NEC Comment #6: NEC objects to several aspects of the Las Vegas Valley CO and PM–10 attainment plans, including the characterizations of baseline ambient conditions based on data from the monitoring network, the emissions inventories, the control measures, and the attainment demonstrations. We are taking no action today related to these plans but do recognize that, in our June 2, 2004 proposed rule on the submitted NSR program, our rationale for determining that the submitted NSR program would not interfere with attainment of the CO and PM–10 NAAQS under section

110(l) of the Act was based in part on our evaluations, and proposed approvals (in separate notices published in January 2003), of the CO and PM–10 attainment plans. See 68 FR 4141 (January 28, 2003) (CO plan proposed approval) and 68 FR 2954 (January 22, 2003) (PM–10 plan proposed approval).

Specifically, in our section 110(l) evaluation for CO, we based our conclusion in part on our previous evaluation and proposed approval (in the January 28, 2003 notice) of the CO attainment plan's inventories, including how those inventories account for stationary sources, our proposed approval of the plan's conclusion that stationary sources are not a significant contributor to CO levels in the valley, and our proposed approval of the attainment demonstration with reliance on on-road motor vehicle measures (*e.g.*, emissions standards, fuels, an inspection and maintenance program, and transportation control measures) not stationary source controls. See 69 FR at 31061–31062 and the related discussion in the TSD on our proposal on the submitted NSR program at pages 31 through 37.

With respect to PM–10, we based our conclusion in part on our evaluation and proposed approval (in the January 22, 2003 notice) of the PM–10 attainment plan's inventories, including how those inventories account for stationary source emissions, the plan's conclusion that stationary sources are not a significant contributor to PM–10 NAAQS violations in the valley, and the plan's attainment demonstration based on implementation of new fugitive dust controls, not stationary source controls.

Subsequent to publication of our June 2, 2004 proposed rule on the submitted NSR program, we took final actions, after due consideration of public comments, to approve the inventories and strategies in the CO and PM–10 attainment plans, and thus, our continued reliance on those plan elements in support of today's final approval of the submitted NSR program under section 110(l) is appropriate. (The final rule approving the CO plan was signed on July 23, 2004 but has not yet been published in the **Federal Register**; the final rule approving the PM–10 plan was published at 69 FR 32273 (June 9, 2004).)

Most of the specific issues raised by NEC on the attainment plans in this comment were raised previously in the context of our January 2003 proposed approvals on the CO and PM–10 plans, and thus, we rely primarily on our consideration of those comments as documented in the Response to Comments Documents prepared in conjunction with our final actions on the plans but also address newly-raised issues in the following paragraphs, which are organized by general subject matter.

Lack of Accurate and Comprehensive Emissions Inventories for the Nonattainment Area: We disagree with this contention and believe that the baseline inventories in these plans represent comprehensive, accurate, and current estimates of actual emissions in the nonattainment area for the reasons set forth in our Response to Comments Documents for the CO and PM–10 attainment plan approvals. See CO Plan Final Rule Response to Comments Document, responses to NEC comments 12, 14, and 17 through 23; and PM–10 Plan Final Rule Response to Comments Document, pages 7 through 13.

Emissions Trends Inversely Proportional to Population Growth: For CO, through 2010, the beneficial effect of motor vehicle and fuel-related CO control measures on CO emissions will more than offset region-wide increases in vehicle-miles-traveled and thereby provide for a net downward trend in CO emissions. See CO Plan Final Rule Response to Comments Document, response to NEC comment #6. For PM–10, the explanation lies in the adoption, implementation, and enforcement of a comprehensive set of regulations (Clark County sections 90 through 94) that address the sources of approximately 90% of the PM–10 emissions inventory in Las Vegas Valley, *i.e.*, fugitive dust sources, including open areas, vacant lots, unpaved roads, unpaved alleys, and unpaved easement roads, unpaved parking lots, paved roads and street sweeping equipment, and construction activities. See the TSD for our proposed rulemaking on the submitted NSR program under the subsection entitled "PM–10 SIP Planning Considerations."

Significant Differences in Current Emissions Estimates Compared to Estimates Published in Previous Plans: Changes in EPA-approved emissions calculation procedures and models necessitate a re-figuring of emissions in updated plans, and the emissions estimates in the current CO and PM–10 plans are well documented and represent an improvement over the corresponding estimates in previous submitted plans. See CO Plan Final Rule Response to Comments Document, response to NEC comment #12; and PM–10 Plan Final Rule Response to Comments Document, responses to comments #7, #8 and #11.

Stationary Source Trends: For CO, the attainment plan reasonably assumes that emissions from major sources would remain unchanged after the baseline date (1996) due to the offset requirement for such sources but assumes that emissions from minor sources would increase in proportion to growth projections for the manufacturing sector. See CO Plan Final Rule Response to Comments Document, response to NEC comment #22. For PM–10, the attainment plan reasonably assumes that emissions from stationary sources would remain relatively constant from 1998 through the attainment year (2006) as the growth in PM–10 emissions that would otherwise be expected to occur roughly in proportion to population is offset by the combination of the application of LAER (all new major stationary sources and major modifications) or BACT (all other new stationary sources and modifications) and the expected downturn in two important PM–10 stationary source categories (sand and gravel operations and asphalt concrete manufacturing) due to declining rates of population growth and associated construction activity. See the TSD for our proposed rulemaking on the submitted NSR program under the subsection entitled "PM–10 SIP Planning Considerations."

Inadequate Monitoring Network: We disagree with this contention and conclude in our final actions on the CO and PM–10 plans that the data from the monitoring network were sufficient for development of the attainment plans although we acknowledge certain deficiencies in the monitoring network that Clark County is in the process of fixing. See CO Plan Final Rule Response to Comments Document, responses to NEC comment #8; and PM–10 Plan Final Rule Response to Comments Document, pages 2 through 7.

Extension of PM–10 Attainment Date and Most Stringent Measures (MSM) Evaluation: We believe that Clark County has adequately identified the significant source categories for which best available control measures (BACM) and most stringent measures (MSM) must be provided, has demonstrated that adopted BACM and MSM are being implemented as expeditiously as practicable, and has provided adequate technological or economic justifications for rejecting additional control measures that theoretically could have provided for a 2001 attainment date. See PM–10 Plan Final Rule Response to Comments Document, pages 30 through 37 and pages 40 through 42. Finally, we note that NSR itself is not a "measure" that need be considered as a "most stringent measure" under section 188(e). NSR affects new or modified sources whereas BACM and MSM represent measures to reduce emissions from existing sources. We note that any revisions to an NSR

program, such as the replacement of a LAER requirement by a BACT requirement for non-major (minor) sources, applies only prospectively, and that, for example, air permits that apply LAER level of control for non-major sources and issued prior to the change in the NSR program would not be affected by the change in the NSR program. That is, the permit condition or conditions that apply LAER to the given source remain enforceable after the change in the NSR program. Only new sources and source modifications that receive permits after the effective date of the change in the NSR program would be affected.

NEC Comment #7: If actual credible data was reported, the Apex Valley would have been declared a nonattainment area years ago. Instead, the EPA is helping DAQEM develop another relaxation of the regulations in the form of process called a "Natural Events Action Plan" (NEAP). The NEAP's sole purpose to cast out data that does not fit the pre-conceived outcome that the EPA and DAQEM have projected for health-based NAAQS. We do not believe that the NEAP has any lawful statutory basis and the practice is highly misleading. We reaffirm our request for full NEAP disclosure without further delay.

Response to NEC Comment #7: In light of this comment, we have reconsidered our evaluation of the submitted NSR program under section 110(l) as it relates to PM–10 emissions in Apex Valley, and we now believe that our conclusion in the proposed rule that there would be an incremental relaxation in NSR requirements under the submitted NSR program (relative to the existing SIP NSR program) in that area with respect to PM–10 but that such relaxation would be acceptable in part because of the future development of a Natural Events Action Plan was in error. We no longer believe it appropriate to rely on the development of a Natural Events Action Plan for Apex Valley to support our revised evaluation. As explained further below, our evaluation of the submitted NSR program was predicated on a mistaken interpretation of the PM–10 requirements for new or modified sources in Apex Valley under the existing SIP NSR program. Our revised interpretation of the existing SIP NSR requirements in Apex Valley has not changed our basic conclusion, *i.e.*, that the submitted NSR program would not interfere with attainment of the PM–10 NAAQS under section 110(l) of the Act, but it has changed the underlying rationale for that conclusion.

In the proposed rule, we relied solely on existing SIP subsection 15.14.1 to conclude that the requirements of subsection 15.14 (such as LAER and, for some sources, offsets) apply to new or modified sources of PM–10 in Apex Valley. In pertinent part, subsection 15.14.1 states: "This section applies to all new, or reconstructed, or modified stationary sources of * * * particulate * * * proposing to locate: (1) in the Las Vegas Valley, or * * * (3) *in any other area in Clark County in which the air quality standards are exceeded*" (emphasis added). We interpreted subsection 15.14.1 as extending the requirements of that subsection (*i.e.*, LAER, and in some cases, offsets) outside of the designated nonattainment area (*i.e.*, Las Vegas Valley) to Apex Valley because Apex Valley had become an *area in Clark County in which the air quality standards are exceeded* by virtue of the fact that PM–10 NAAQS exceedances have been recorded in that area in recent years. (The current designations under section 107(d) of the Act for the two hydrographic areas (#216 and #217) that comprise Apex Valley are "unclassifiable" for the PM–10 NAAQS, see 40 CFR 81.329, and EPA has not initiated the process to redesignate either one of the areas to "nonattainment.")

Upon reconsideration, we now believe that our sole reliance on subsection 15.14.1 was mistaken. We should have also considered existing SIP subsection 15.13.1, and the definition of "nonattainment area" in existing SIP section 1, and in so doing, we find that the phrase "*in any other area in Clark County in which the air quality standards are exceeded*" in subsection 15.14.1 is correctly interpreted to refer to an area that has been established as a "nonattainment area" by the Governor of Nevada and not just any area in which a monitor has recorded exceedances of the standard.

Existing SIP subsection 15.13 requires BACT level of control but does not require offsets. In pertinent part, existing SIP subsection 15.13.1 specifies that subsection 15.13 "applies to all new, reconstructed, or modified sources of * * * particulate * * * *in the attainment areas of Clark County*" (emphasis added). Existing SIP section 1 ("Definitions") does not define the term "attainment area" but does so by negative implication by defining the term, "non-attainment area," to be "an area which has been determined to exceed any national ambient air quality limit for any pollutant for which there is a standard. The Non-attainment Area for Clark County, Nevada has been established by the Governor of the State of Nevada and such area coincides with the boundaries of the Hydrographic Area 212 (Las Vegas Valley) as reported in the document "Water Resources—Information Series—Report 6" issued by the Nevada State Engineer's Office in September, 1968. By negative implication, an "attainment area" then is an area that has not been determined to exceed a given NAAQS through a process involving the Governor. As such, subsection 15.13, rather than subsection 15.14, applies to new or modified PM–10 sources in Apex Valley under the existing SIP NSR program because it is comprised by two areas that remain designated as "unclassifiable" for the PM–10 NAAQS (in this context, "unclassifiable" and "attainment" represent designations with equivalent regulatory requirements), and although exceedances of the PM–10 NAAQS have been measured there, Apex Valley has not been "determined to exceed" through any process involving the State of Nevada or, more specifically, the Governor and thus does not represent an "*area in Clark County in which the air quality standards are exceeded*" for the purposes of subsection 15.14.

This revised interpretation is supported by the recognition of some of the enforceability problems that flow from our previous interpretation. These problems include lack of fair notice to regulated sources as to when the requirements under subsection 15.14 (*i.e.*, LAER and, in some cases, offsets) are triggered for new sources and modifications (*e.g.*, it could be upon one exceedance, or sufficient exceedances to constitute a violation of the NAAQS, or some other triggering event), when the requirements no longer apply (*e.g.*, after a year of clean data or some other indication that the area no longer is exceeding the standard), and what area is affected (*e.g.*, the immediate area surrounding the monitoring station, the section 107(d) area (codified in 40 CFR part 81, subpart C) in which the monitor is located, or the entire valley in which the monitor is located, which in this case involves two section 107(d) areas, or some other geographic area). Any process under which the Governor makes a determination that a NAAQS is exceeded in a given area would invariably identify an effective date, identify criteria for "attaining" the standard once again, and delineate boundaries for the affected area, and thereby avoid the enforceability problems associated with our previous interpretation.

With the revised interpretation of the requirements for new or modified PM–10 sources in Apex Valley under the

existing SIP NSR program, we now find that there would be no relaxation in either the control technology requirement (BACT applies under both the existing SIP and submitted NSR programs) or offset requirement (none under either program) and thus approval of the submitted NSR program would not interfere with attainment of the PM–10 NAAQS in Apex Valley. Since our revised rationale for approving the submitted NSR program under section 110(l) as it relates to PM–10 in Apex Valley rests fundamentally on an interpretation of existing regulatory requirements, we are not required to conduct supplemental notice and comment due to the exemption for interpretive rules under section 553(b) of the Administrative Procedure Act.

If, and when, EPA redesignates Apex Valley, or some portion thereof, to nonattainment for PM–10 under section 107(d) of the Act, then the Clark County portion of the Nevada SIP will need to be revised to provide for, among other things, implementation of reasonably available control measures (RACM) to reduce emissions from existing PM–10 sources. In addition, the Clark County NSR program will need to be revised to require LAER and offsets for new major sources and major modifications proposing to locate in the area so designated.

NEC Comment #8: We object to EPA's failure to implement a Federal Implementation Plan (FIP) under section 110(c)(1).

Response to NEC Comment #8: We acknowledge that our deadlines for promulgating CO and PM–10 "serious area" FIPs under section 110(c)(1)(A) of the Act have passed, but our authority to promulgate them under that section has also now expired, with the exception of CO contingency provisions, due to our recent final actions approving the CO and PM–10 plans for Las Vegas Valley. Our decision not to take final action on the CO contingency provisions has no effect on our final action today on the submitted NSR program.

III. EPA Action

As authorized under section 110(k)(3) of the Act, EPA is partially approving and partially disapproving the revised Clark County NSR program. Our final action is a partial approval because we are approving submitted CCAQR sections 0, 11, 12 (except subsections 12.2.18 and 12.2.20), 58, and 59 (except subsection 59.2, which was withdrawn) and submitted State regulation NAC 445B.22083, based on our determination that these rules comply with relevant CAA requirements for permitting of new or modified stationary sources in Clark County and that supercession of related existing SIP provisions (*i.e.*, parts of section 1 and all of sections 11 and 15) is consistent with section 110(l) and 193 of the CAA. That is, we have determined that supercession of the existing SIP Clark County NSR program with the submitted NSR program will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the Act, consistent with section 110(l) as interpreted by the Ninth Circuit in *Hall* v. *EPA*, and will provide for equivalent or greater emission reductions of nonattainment pollutants as called for in CAA section 193. This action incorporates the rules, or portions of rules, that we are approving into the Nevada SIP. Furthermore, our approval of the submitted NSR program provides us with the basis to withdraw EPA's nonattainment area visibility FIP authority as it relates to new source review by DAQEM in Clark County (see 40 CFR 52.1488(b)).

This final approval of section 0 ("Definitions"), as submitted on October 23, 2003, in its entirety results in the supercession of all of the definitions in existing SIP section 1 ("Definitions") *except* for the following 33 terms: Affected Facility (1.1), Air Contaminant (1.3), Air Pollution Control Committee (1.6), Area Source (1.11), Atmosphere (1.12), Board (1.16), Commercial Off-Road Vehicle Racing (1.23), Dust (1.26), Existing Facility (1.28), Existing Gasoline Station (1.29), Fixed Capital Cost (1.30), Fumes (1.36), Health District (1.40), Hearing Board (1.41), Integrated Sampling (1.44), Minor Source (1.50), Mist (1.51), New Gasoline Station (1.57), New Source (1.58), NIC (1.60), Point Source (1.70), Shutdown (1.78), Significant (unnumbered), Single Source (1.81), Smoke (1.83), Source of Air Contaminant (1.84), Special Mobile Equipment (1.85), Standard Commercial Equipment (1.87), Standard Conditions (1.88), Start Up (1.89), Stop Order (1.91), Uncombined Water (1.95), and Vapor Disposal System (1.97). Also, this final approval of section 0 results in the supercession of all 29 of the section 0 definitions that were submitted to EPA on July 23, 2001 as part of the Las Vegas PM–10 attainment plan and approved by EPA on June 9, 2004 (see 69 FR 32273, at 32277).[6]

Our action also constitutes a partial disapproval because we are disapproving submitted CCAQR section 12, subsections 12.2.18 and 12.2.20, and submitted CCAQR section 52, subsection 52.8. We are disapproving submitted CCAQR section 12, subsections 12.2.18 and 12.2.20, which relate to regulation of hazardous air pollutants, as inappropriate for inclusion in the SIP.[7] We are disapproving submitted CCAQR subsection 52.8 because it cannot be evaluated properly in the absence of a SIP submittal of the entire rule (*i.e.*, CCAQR section 52). These disapproved rules are not incorporated into the SIP. No sanctions flow from this partial disapproval action under section 179 of the Act because the disapproved provisions do not constitute required SIP submissions.

Second, in recognition of the vacature of our approval of previous versions of the Clark County NSR rules in *Hall* v. *EPA*, we are deleting 40 CFR 52.1470(c)(36) and (37).

Third, under section 110(k)(6), we are correcting certain provisions of the Clark County portion of the Nevada SIP that we approved in error and are revising certain provisions of the Clark County portion of the Nevada SIP that warrant clarification. Specifically, we are deleting SIP section 1, subsections 1.79 (Significant source of total chlorides) and 1.94 (Total Chlorides); SIP section 15 (Prohibition of Nuisance Conditions); SIP section 29 (Odors in the Ambient Air); SIP section 40, subsection 40.1 (Prohibition of Nuisance Conditions); SIP section 42, subsection 42.2 (untitled but related to nuisance from open burning); and SIP section 43, subsection 43.1 (Odors in the Ambient Air), from the appropriate paragraphs of section 1470 ("Identification of plan") of 40 CFR part 52, subpart DD (Nevada). This action deletes these rules from the federally enforceable SIP. We are adding

[6] In our TSD (dated April 23, 2004) for the proposed action on the Clark County NSR rules, we compared the definitions in section 0, as adopted locally on December 4, 2001 and submitted to EPA on February 25, 2003, with the corresponding definitions in a previous version of section 0 that had been submitted as part of the Las Vegas PM–10 attainment plan and concluded that there were no substantive differences between the two sets of definitions. In this final rule, we recognize that the February 25, 2003 submittal was superceded by the October 23, 2003 submittal, but we have concluded that there are no substantive differences between the set of definitions in the October 23, 2003 submittal and the corresponding set of definitions submitted as part of the Las Vegas PM–10 attainment plan.

[7] HAP regulations are not inappropriate for approval as part of a SIP in every instance, see, *e.g.*, 40 CFR part 51, Appendix S, IV. C.6, but in this instance, CCAQR subsections 12.2.18 and 12.2.20 do not apply to sources subject to the criteria pollutant provisions contained in other subsections of CCAQR section 12 and thus are inappropriate because they would not contribute to attainment of a NAAQS nor are they needed to satisfy the non-criteria pollutant requirements of the Federal NSR regulations.

paragraphs to 40 CFR 52.1483 ("Malfunction regulations") to clarify that former SIP section 12 (Upset, Breakdown, or Scheduled Maintenance) and submitted section 25.1 (untitled, but related to upset, breakdown, or scheduled maintenance) have been disapproved and are not part of the applicable SIP.[8] Lastly, we are revising the 40 CFR 52.1470(c)(33) to clarify that SIP section 33 (Chlorine in Chemical Processes) was, and continues to be, approved into the Nevada SIP as part of our approval of the overall post-1982 ozone plan for Las Vegas Valley.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 8, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compound.

Dated: August 25, 2004.

Wayne Nastri,

Regional Administrator, Region IX.

■ Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart DD—Nevada

■ 2. Section 52.1470 is amended as follows:

■ a. Adding paragraphs (c)(5)(i), (c)(16)(viii)(C), (c)(17)(ii)(A), (c)(53), and (c)(54);

■ b. Revising paragraph (c)(33)(i)(A); and

■ c. Removing and reserving paragraphs (c)(36) and (c)(37).

§ 52.1470 Identification of plan.

* * * * *

(c) * * *

(5) * * *

(i) Previously approved on May 14, 1973 in paragraph (c)(5) of this section and now deleted without replacement: Section 15 (Prohibition of Nuisance Conditions) and Section 29 (Odors in the Ambient Air).

* * * * *

(16) * * *

(viii) * * *

(C) Previously approved on August 27, 1981 in paragraph (c)(16)(viii) of this section and now deleted without replacement: Section 40, Rule 40.1 (Prohibition of Nuisance Conditions); Section 42, Rule 42.2 (open burning); and Section 43, Rule 43.1 (Odors in the Ambient Air).

(17) * * *

(ii) * * *

(A) Previously approved on August 27, 1981 in paragraph (c)(17)(ii) of this

[8] We had indicated in our June 2, 2004 proposed rule that we would clarify the disapproval status of these rules by revising the appropriate paragraphs in 40 CFR 52.1470, but we are instead adding text to 40 CFR 52.1483, which is a specific section of 40 CFR part 52, subpart DD (Nevada) that lists regulations that address upset conditions and that have been submitted to EPA as revisions to the Nevada SIP but that have been specifically disapproved by EPA.

section and now deleted without replacement: Section 1, Rules 1.79, 1.94.

* * * * *

(33) * * *

(i) * * *

(A) Las Vegas Valley Air Quality Implementation Plan, Post 1982 Update for Ozone adopted on October 16, 1984 (including section 33 (Chlorine in Chemical Processes)), adopted May 18, 1984).

* * * * *

(53) The following plan revision was submitted on October 23, 2003, by the Governor's designee.

(i) Incorporation by reference.

(A) Clark County Department of Air Quality and Environmental Management.

(*1*) New or amended rules adopted on October 7, 2003 by the Clark County Board of County Commissioners: Clark County Air Quality Regulations section 0 (Definitions), section 11 (Ambient Air Quality Standards), section 12 (Preconstruction Review for New or Modified Stationary Sources), excluding subsection 12.2.18 and 12.2.20, section 58 (Emission Reduction Credits), and section 59 (Emission Offsets), excluding subsection 59.2 ("Local Offset Requirements").

(54) The following plan revision was submitted on November 20, 2003 by the Governor's designee.

(i) Incorporation by reference.

(A) Nevada Division of Environmental Protection.

(*1*) Nevada Administrative Code section 445B.22083, adopted March 3, 1994 (effective March 29, 1994), by the State Environmental Commission.

■ 3. Section 52.1483 is amended as follows:

■ a. Redesignating paragraph (a)(1)(i) as paragraph (a)(1)(iii);

■ b. Adding new paragraphs (a)(1)(i) and (a)(1)(ii); and

■ c. Revising newly designated paragraph (a)(1)(iii).

§ 52.1483 Malfunction regulations.

(a) * * *

(1) * * *

(i) Previously approved on May 14, 1973 and deleted without replacement on August 27, 1981: Section 12 (Upset, Breakdown, or Scheduled Maintenance).

(ii) Section 25, Rule 25.1, submitted by the Governor on July 24, 1979.

(iii) Section 25, Rules 25.1–25.1.4, submitted by the Governor on November 17, 1981.

■ 4. Section 52.1488 is amended by revising paragraph (b) to read as follows:

§ 52.1488 Visibility protection.

* * * * *

(b) Regulation for visibility monitoring and new source review. The provisions of § 52.26 are hereby incorporated and made a part of the applicable plan for the State of Nevada. The provisions of § 52.28 are hereby incorporated and made a part of the applicable plan for the State of Nevada except for that portion applicable to the Clark County Department of Air Quality and Environmental Management.

* * * * *

[FR Doc. 04–20137 Filed 9–3–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[RME Docket Number R08–OAR–2004–CO–0002; FRL–7809–2]

Approval and Promulgation of Air Quality Implementation Plans; State of Colorado; Colorado Springs Revised Carbon Monoxide Maintenance Plan and Approval of Related Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action approving a State Implementation Plan (SIP) revision submitted by the State of Colorado. On April 12, 2004, the Governor of Colorado submitted a revised maintenance plan for the Colorado Springs carbon monoxide (CO) maintenance area for the CO National Ambient Air Quality Standard (NAAQS). The revised maintenance plan contains a revised transportation conformity budget for the year 2010 and beyond. In addition, the Governor submitted revisions to Colorado's Regulation No. 11 "Motor Vehicle Emissions Inspection Program." In this action, EPA is approving the Colorado Springs CO revised maintenance plan, revised transportation conformity budget, and the revisions to Regulation No. 11. This action is being taken under section 110 of the Clean Air Act.

DATES: This rule is effective on November 8, 2004, without further notice, unless EPA receives adverse comment by October 7, 2004. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by RME Docket Number R08–OAR–2004–CO–0002, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- Agency Web site: *http://docket.epa.gov/rmepub/index.jsp*. Regional Materials in EDOCKET (RME), EPA's electronic public docket and comment system for regional actions, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- E-mail: *long.richard@epa.gov* and *russ.tim@epa.gov*.
- Fax: (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- Mail: Richard R. Long, Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 999 18th Street, Suite 300, Denver, Colorado 80202–2466.
- Hand Delivery: Richard R. Long, Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:55 p.m., excluding federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to RME Docket Number R08–OAR–2004–CO–0002. EPA's policy is that all comments received will be included in the public docket without change and may be made available at *http://docket.epa.gov/rmepub/index.jsp*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. EPA's Regional Materials in EDOCKET and federal regulations.gov Web site are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your

comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET online or see the **Federal Register** of May 31, 2002 (67 FR 38102). For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the Regional Materials in EDOCKET index at *http://docket.epa.gov/rmepub/index.jsp*. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicaly available only in hard copy form. Publicly available docket materials are available either electronically in Regional Materials in EDOCKET or in hard copy at the Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Tim Russ, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, phone (303) 312–6479, and e-mail at: *russ.tim@epa.gov*.

SUPPLEMENTARY INFORMATION:

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Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *NAAQS* mean National Ambient Air Quality Standard.

(iv) The initials *SIP* mean or refer to State Implementation Plan.

(v) The word *State* means the State of Colorado, unless the context indicates otherwise.

I. General Information

A. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through Regional Materials in EDOCKET, regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. What Is the Purpose of This Action?

In this action, we are approving a revised maintenance plan for the Colorado Springs CO attainment/maintenance area that is designed to keep the area in attainment for CO through 2015, we're approving a revised transportation conformity motor vehicle emissions budget (MVEB), and we're approving revisions to Colorado's Regulation No. 11 entitled "Motor Vehicle Emissions Inspection Program." We approved the original CO redesignation to attainment and maintenance plan for the Colorado Springs area on August 25, 1999 (see 64 FR 46279). We approved the first revision to the maintenance plan on December 22, 2000 (see 65 FR 80779).

The revised Colorado Springs CO maintenance plan that we approved on December 22, 2000 (hereafter December 22, 2000 maintenance plan) utilized the then applicable EPA mobile sources emission factor model, MOBILE5a. On January 18, 2002, we issued policy guidance for States and local areas to use to develop SIP revisions using the new, updated version of the model, MOBILE6. The policy guidance was entitled "Policy Guidance on the Use of MOBILE6 for SIP Development and Transportation Conformity" (hereafter, January 18, 2002 MOBILE6 policy). On November 12, 2002, EPA's Office of Transportation and Air Quality (OTAQ) issued an updated version of the MOBILE6 model, MOBILE6.2, and notified Federal, State, and Local agency users of the model's availability. MOBILE6.2 contained additional updates for air toxics and particulate matter. However, the CO emission factors were essentially the same as in the MOBILE6 version of the model.

For the three years analyzed in the December 22, 2000 maintenance plan (1990, 2005, and 2010), the State revised and updated the mobile sources CO emissions using MOBILE6.2 and also extended the maintenance period out to 2015. The State recalculated the CO MVEB for 2010 and beyond and also applied a selected amount of the available safety margin to the 2010 transportation conformity MVEB. In addition, based on the significant CO emissions reductions predicted by the MOBILE6.2 model, the State's revised maintenance demonstration shows maintenance of the CO NAAQS with the elimination, beginning January 1, 2005, of the motor vehicle Basic Inspection and Maintenance (I/M) program for El Paso County, Colorado, which includes

the Colorado Springs CO attainment/maintenance area. Thus, the State has asked us to approve a revision to Regulation No. 11 that would eliminate the Basic I/M program beginning January 1, 2005. We have determined that all the revisions noted above are Federally-approvable, as described further below.

III. What Is the State's Process To Submit These Materials to EPA?

Section 110(k) of the CAA addresses our actions on submissions of revisions to a SIP. The CAA requires States to observe certain procedural requirements in developing SIP revisions for submittal to us. Section 110(a)(2) of the CAA requires that each SIP revision be adopted after reasonable notice and public hearing. This must occur prior to the revision being submitted by a State to us.

The Colorado Air Quality Control Commission (AQCC) held a public hearing for the revised Colorado Springs Carbon Monoxide (CO) Maintenance Plan and Regulation No. 11 revisions on December 18, 2003. The AQCC adopted the revised maintenance plan and Regulation No. 11 revisions directly after the hearing. These SIP revisions became State effective on March 1, 2004, and were submitted by the Governor to us on April 12, 2004.

We have evaluated the Governor's submittal for the revised maintenance plan and Regulation No. 11 revisions and have determined that the State met the requirements for reasonable notice and public hearing under section 110(a)(2) of the CAA. We reviewed these SIP materials for conformance with the completeness criteria in 40 CFR 51, Appendix V and determined that the submittals were administratively and technically complete. The Governor was advised of our completeness determination through a letter from Robert E. Roberts, Regional Administrator, dated June 17, 2004.

IV. EPA's Evaluation of the Revised Maintenance Plan

EPA has reviewed the State's revised maintenance plan for the Colorado Springs attainment/maintenance area and believes that approval is warranted. The following are the key aspects of this revision along with our evaluation of each:

(a) The State has revised the Colorado Springs maintenance plan and has air quality data that support continuous attainment of the CO NAAQS.

As described in 40 CFR 50.8, the national primary ambient air quality standard for carbon monoxide is 9 parts per million (10 milligrams per cubic meter) for an 8-hour average concentration not to be exceeded more than once per year. 40 CFR 50.8 continues by stating that the levels of CO in the ambient air shall be measured by a reference method based on 40 CFR part 50, Appendix C and designated in accordance with 40 CFR part 53 or an equivalent method designated in accordance with 40 CFR part 53. The December 22, 2000 maintenance plan relied on ambient air quality data from 1990 through 1999. In our consideration of the revised Colorado Springs CO maintenance plan, submitted by the Governor on April 12, 2004, we reviewed ambient air quality data from 1990 through 2003 and the first calendar quarter of 2004. The Colorado Springs area shows continuous attainment of the CO NAAQS from 1990 to present. All of the above-referenced air quality data are archived in our Aerometric Information and Retrieval System (AIRS).

(b) Using the MOBILE6.2 emission factor model, the State revised the attainment year inventory (1990), prior projected years (2005, 2010) inventories, and provided new projected years (2007 and 2015) emission inventories.

The revised maintenance plan that the Governor submitted on April 12, 2004, includes comprehensive inventories of CO emissions for the Colorado Springs area. These inventories include emissions from stationary point sources, area sources, non-road mobile sources, and on-road mobile sources. More detailed descriptions of the revised 1990 attainment year inventory, the revised 2005 and 2010 projected inventories, and the new projected 2007 and 2015 inventories, are documented in the maintenance plan in section 2 entitled "Emission Inventories and Maintenance Demonstration", and in the State's Technical Support Document (TSD). The State's submittal contains emission inventory information that was prepared in accordance with EPA guidance. Summary emission figures from the 1990 attainment year and the projected years are provided in Table IV.—1 below.

TABLE IV.—1

[Summary of CO Emissions in Tons Per Day for Colorado Springs]

Source category	1990	2005	2007	2010	2015
Point	2.83	3.28	3.34	3.84	4.32
Area	47.39	36.26	34.78	34.48	35.42
Non-Road	28.86	41.10	42.85	45.29	49.43
On-Road	542.27	417.66	389.68	350.21	320.20
Total[1]	621.35	498.30	470.65	433.82	409.37

[1] We note that the total emissions in our Table IV.—1 vary slightly from those in Table 1 of the State's maintenance plan (in the hundredths of a ton significant figure.) This is due to the rounding of calculations embedded in the State's Table 1.

The revised mobile source emissions show the largest change from the December 22, 2000 maintenance plan and this is primarily due to the use of MOBILE6.2 instead of MOBILE5a. The MOBILE6.2 modeling information is contained in the State's TSD (see "Mobile Source Emission Inventories", page 6) and on a compact disk we prepared (a copy is available upon request). The State's TSD information is also available on a compact disk that may be requested from the State or it can be downloaded directly from the State's Web site at *http://apcd.state.co.us/documents/techdocs.html*. The TSD compact disc contains much of the modeling data, input-output files, fleet makeup, MOBILE6.2 input parameters, etc. and is included with the docket for this action. Other revisions to the mobile sources category resulted from revised vehicle miles traveled (VMT) estimates that were provided to the State by the Pikes Peak Area Council of Governments (PPACG), which is the metropolitan planning organization (MPO) for the Colorado Springs area, and were extracted from PPACG's 2025 Long Range Plan. In summary, the revised maintenance plan and State TSD contain detailed emission inventory information that was prepared in accordance with EPA guidance and is acceptable to EPA.

(c) The State revised the maintenance demonstration used in the December 22,

2000 Colorado Springs maintenance plan.

The December 22, 2000 CO maintenance plan utilized the then applicable EPA mobile sources emission factor model, MOBILE5a. On January 18, 2002, we issued policy guidance for States and local areas to use to develop SIP revisions using the updated version of the model, MOBILE6. The policy guidance was entitled "Policy Guidance on the Use of MOBILE6 for SIP Development and Transportation Conformity" (hereafter, January 18, 2002 MOBILE6 policy). Additional policy guidance regarding EPA's MOBILE model was issued on November 12, 2002, which notified Federal, State, and Local agencies that the updated MOBILE6.2 model was now available and was the recommended version of the model to be used. We note that the State used the MOBILE6.2 model to revise the Colorado Springs maintenance plan.

Our January 18, 2002, MOBILE6 policy allows areas to revise their motor vehicle emission inventories and transportation conformity MVEBs using the MOBILE6 model without needing to revise the entire SIP or completing additional modeling if: (1) The SIP continues to demonstrate attainment or maintenance when the MOBILE5-based motor vehicle emission inventories are replaced with MOBILE6 base year and attainment/maintenance year inventories and, (2) the State can document that the growth and control strategy assumptions for non-motor vehicle emission sources continue to be valid and minor updates do not change the overall conclusion of the SIP. Our January 18, 2002 MOBILE6 policy also speaks specifically to CO maintenance plans on page 10 of the policy. The first paragraph on page 10 of the policy states "* * * if a carbon monoxide (CO) maintenance plan relied on either a relative or absolute demonstration, the first criterion could be satisfied by documenting that the relative emission reductions between the base year and the maintenance year are the same or greater using MOBILE6 as compared to MOBILE5."

The State could have used the streamlined approach described in our January 18, 2002 MOBILE6 policy to update the Colorado Springs CO MVEB. However, the Governor's April 12, 2004 SIP submittal instead contained a completely revised maintenance plan and maintenance demonstration for the Colorado Springs area. That is, all emission source categories (point, area, non-road, and mobile) were updated using the latest versions of applicable models (including MOBILE6.2), transportation data sets, emissions data, emission factors, population figures and other demographic information. We have determined that this fully revised maintenance plan SIP submittal exceeds the requirements of our January 18, 2002 MOBILE6 policy and, therefore, our January 18, 2002 MOBILE6 policy is not relevant to our approval of the revised maintenance plan and its MVEB.

As discussed above, the State prepared revised emission inventories for the years 1990, 2005, 2007, and 2010, and 2015. The results of these calculations are presented in Table 1 "Colorado Springs Carbon Monoxide Maintenance Plan Emission Inventories" on page 4 of the revised Colorado Springs maintenance plan and are also summarized in out Table IV–1 above. The State has demonstrated that with the use of MOBILE6.2, mobile source emissions show a continuous decline from 1990 to 2015 and that the total CO emissions, from all source categories, projected for each future year (2005, 2007, 2010, and 2015) are all below the 1990 attainment year level of total CO emissions. Therefore, we have determined that the revised maintenance plan continues to demonstrate maintenance of the CO NAAQS from 1990 through 2015 and is approvable.

(d) The State has modified Regulation No. 11 to eliminate the Motor Vehicle Emissions Inspection Program for El Paso County and the Colorado Springs Area.

As described in the revised maintenance plan, as of January 1, 2005, the Basic I/M program (of Regulation No. 11) will not be a part of the Federally enforceable SIP for the Colorado Springs area. No CO emission reduction credit for this program was taken for the years 2005, 2007, 2010, and 2015 in the maintenance demonstration.

The State performed an analysis and determined that the requirements of the Basic Inspection and Maintenance (I/M) program of Regulation No. 11 could be eliminated for the Colorado Springs area without jeopardizing maintenance of the CO NAAQS. This analysis was performed using EPA's MOBILE6.2 emission factor model and the latest transportation planning data from the PPACG. We reviewed the methodology and analysis and we have determined they are acceptable. The results of the modeling are presented in the revised maintenance plan's "Table 1" and are applicable to the years 2005, 2007, 2010, and 2015. These mobile source emissions figures are also incorporated in our Table IV–1 above. Based on our review of the State's modeling analysis and emission figures, we agree that the Colorado Springs area continues to demonstrate maintenance of the CO NAAQS and we are approving the elimination, from the Federally-approved SIP, of the Basic I/M program requirements of Regulation No. 11 for El Paso County and the Colorado Springs area.

(e) Monitoring Network and Verification of Continued Attainment.

Continued attainment of the CO NAAQS in the Colorado Springs area depends, in part, on the State's efforts to track indicators throughout the maintenance period. This requirement is met in section 6. "Monitoring Network/Verification of Continued Attainment" of the revised Colorado Springs, CO maintenance plan. In section 6., the State commits to continue the operation of the CO monitor in the Colorado Springs area and to annually review this monitoring network and make changes as appropriate.

Also, in section 6 and 7.A, the State commits to track mobile sources' CO emissions (which are the largest component of the inventories) through the ongoing regional transportation planning process that is done by PPACG. Since regular revisions to Colorado Springs' transportation improvement programs must go through a transportation conformity finding, the State will use this process to periodically review the Vehicle Miles Traveled (VMT) and mobile source emissions projections used in the revised maintenance plan. This regional transportation process is conducted by PPACG in coordination with the State's Air Pollution Control Division (APCD), the AQCC, and EPA.

Based on the above, we are approving these commitments as satisfying the relevant requirements. We note that our final rulemaking approval renders the State's commitments federally enforceable. These commitments are also the same as were approved in the original maintenance plan and the December 22, 2000 maintenance plan.

(f) Contingency Plan.

Section 175A(d) of the CAA requires that a maintenance plan include contingency provisions. To meet this requirement, the State has identified appropriate contingency measures along with a schedule for the development and implementation of such measures.

As stated in section 7 of the revised maintenance plan, the contingency measures for the Colorado Springs area will be triggered by a violation of the CO NAAQS. (However, the maintenance plan does note that an exceedance of the CO NAAQS may initiate a voluntary,

local process by the PPACG and APCD to identify and evaluate potential contingency measures.)

The PPACG, in coordination with the APCD and AQCC, will initiate a subcommittee process to begin evaluating potential contingency measures no more than 60 days after being notified by the APCD that a violation of the CO NAAQS has occurred. The subcommittee will present recommendations within 120 days of notification and the recommended contingency measures will be presented to the AQCC within 180 days of notification. The AQCC will then hold a public hearing to consider the recommended contingency measures, along with any other contingency measures that the AQCC believes may be appropriate to effectively address the violation of the CO NAAQS. The necessary contingency measures will be adopted and implemented within one year after the violation occurs.

The potential contingency measures that are identified in section 7.C of the revised Colorado Springs, CO maintenance plan include: (1) A 2.7% oxygenated fuels program as set forth in Regulation No. 13, as it existed prior to the modifications approved by the AQCC on February 17, 2000 and (2) reinstatement of the Basic I/M program as set forth in Regulation No. 11, as it existed prior to the modifications approved by the AQCC on December 18, 2003, with the addition of any on-board diagnostics components required by Federal law.

Based on the above, we find that the contingency measures provided in the State's revised Colorado Springs CO maintenance plan are sufficient and continue to meet the requirements of section 175A(d) of the CAA.

(g) Subsequent Maintenance Plan Revisions.

In accordance with section 175A(b) of the CAA, Colorado has committed to submit a revised maintenance plan eight years after our approval of the original redesignation. This provision for revising the maintenance plan is contained in section 8 of the revised Colorado Springs CO maintenance plan. In section 8, the State commits to submit a revised maintenance plan within 2007 to correspond with our approval of the original maintenance plan on August 25, 1999 (64 FR 46279).

Based on our review of the components of the revised Colorado Springs CO maintenance plan, as discussed in our items IV.(a) through IV.(g) above, we have concluded that the State has met the necessary requirements in order for us to fully approve the revised Colorado Springs CO maintenance plan.

V. EPA's Evaluation of the Transportation Conformity Requirements

One key provision of our conformity regulation requires a demonstration that emissions from the transportation plan and Transportation Improvement Program are consistent with the emissions budget(s) in the SIP (40 CFR sections 93.118 and 93.124). The emissions budget is defined as the level of mobile source emissions relied upon in the attainment or maintenance demonstration to maintain compliance with the NAAQS in the nonattainment or maintenance area. The rule's requirements and EPA's policy on emissions budgets are found in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62193–96) and in the sections of the rule referenced above.

With respect to maintenance plans, our conformity regulation requires that MVEB(s) must be established for the last year of the maintenance plan and may be established for any other years deemed appropriate (40 CFR 93.118). For transportation plan analysis years after the last year of the maintenance plan (in this case 2015), a conformity determination must show that emissions are less than or equal to the maintenance plan's motor vehicle emissions budget(s) for the last year of the implementation plan. EPA's conformity regulation (40 CFR 93.124) also allows the implementation plan to quantify explicitly the amount by which motor vehicle emissions could be higher while still demonstrating compliance with the maintenance requirement. The implementation plan can then allocate some or all of this additional "safety margin" to the emissions budget(s) for transportation conformity purposes.

Section 5 "Transportation Conformity and Mobile Source Carbon Monoxide Emission Budget" of the revised Colorado Springs CO maintenance plan briefly describes the applicable transportation conformity requirements, provides MVEB calculations, identifies "safety margin", and indicates that the PPACG elected to apply the identified "safety margin" to update an MVEB for 2010 and beyond.

In section 5 of the revised maintenance plan, the State evaluated two MVEBs; a budget for 2015 (the last year of the maintenance plan) and beyond, and a budget applicable to the years 2010 through 2014. For the 2015 MVEB, the State subtracted the total estimated 2015 emissions (from all sources) of 409.35 Tons Per Day (TPD) from the 1990 attainment year total emissions of 621.33 TPD. This produced a "safety margin" of 211.98 TPD. The State then reduced this "safety margin" by one TPD. The identified "safety margin" of 210.98 TPD for 2015 was then added to the estimated 2015 mobile sources emissions, 320.20 TPD, to produce a 2015 MVEB of 531 TPD. For the 2010 through 2014 MVEB, the State subtracted the total estimated 2010 emissions (from all sources) of 433.82 TPD from the 1990 attainment year total emissions of 621.33 TPD. This produced a "safety margin" of 187.51 TPD. The State then reduced this "safety margin" by one TPD. The identified "safety margin" of 186.51 TPD for 2010 was then added to the estimated 2010 mobile sources emissions, 350.21 TPD, to produce a 2010 through 2014 MVEB of 536 TPD. In consultation with the PPACG, the State then decided to only identify one MVEB which would apply to 2010 and beyond. The first sentence of paragraph two of section 5 of the revised maintenance plan states, "The Colorado Springs attainment/maintenance area mobile source emission budget is 531 tons/day for 2010 and beyond." Based on this choice, and in order for a positive conformity determination to be made, transportation plan analyses for years after 2010 must show that motor vehicle emissions will be less than or equal to the 2010 MVEB of 531 TPD of CO. The revised maintenance plan also states that the previously approved CO MVEB of 270 TPD for 2010 and beyond (see 65 FR 80779, December 22, 2000) is removed from the SIP and is replaced by the new MVEB of 531 TPD. We have concluded that the State has satisfactorily demonstrated continued maintenance of the CO NAAQS while using a transportation conformity MVEB of 531 TPD for 2010 and beyond. Therefore, we are approving the transportation conformity MVEB of 531 TPD of CO, for the Colorado Springs attainment/maintenance area, for 2010 and beyond.

In addition to the above, the State has made a commitment regarding transportation conformity in section 3 of the maintenance plan. Because informal roll-forward analyses, prepared by the State, indicate that the 2010 and beyond CO MVEB may be exceeded by 2030, the State has committed to the re-implementation of the Basic I/M program (with any Federally required on-board diagnostic tests) for the Colorado Springs area in 2026. This commitment by the State is included in the revised maintenance plan for purposes of 40 CFR 93.122(a)(3)(iii),

which provides that emissions reduction credit from such programs may be included in the transportation conformity emissions analysis if the maintenance plan contains such a written commitment. We agree with this interpretation of 40 CFR 93.122(a)(3)(iii) and are making this State commitment Federally enforceable with our approval of the Colorado Springs CO revised maintenance plan.

VI. EPA's Evaluation of the Regulation No. 11 Revisions

Colorado's Regulation No. 11 is entitled "Motor Vehicle Emissions Inspection Program" (hereafter referred to as Regulation No. 11). In developing the Colorado Springs revised CO maintenance plan, the State evaluated options for revising the then applicable Basic I/M motor vehicle emissions inspection program that was being implemented in El Paso County for the Colorado Springs CO attainment/maintenance area. The State's final decision, which was based on results from the use of our MOBILE6.2 emission factor model, was to eliminate the Basic I/M program for El Paso County and the Colorado Springs area from the Federal SIP beginning on January 1, 2005.

The Regulation No. 11 revisions adopted by the AQCC on December 18, 2003, State effective on March 1, 2004, and submitted by the Governor on April 12, 2004, remove El Paso County and the Colorado Springs area component of the Colorado Automobile Inspection and Maintenance ("AIR") program from the Federally-approved SIP, but do not make any changes in State laws for implementing this Basic I/M program in El Paso County and the Colorado Springs area. This means that the AIR program for the implementation of the Basic I/M program will remain in full force and effect as a State-only program under State laws, but it will not be Federally-enforceable after January 1, 2005. The revised maintenance plan reflects this change in Regulation No. 11 in that mobile source CO emissions were calculated for the Colorado Springs area for 2005, 2007, 2010, and 2015 without the benefit of a Basic I/M program. We note, though, that even with the elimination of the Basic I/M program beginning on January 1, 2005, the Colorado Springs area is still able to meet our requirements to demonstrate maintenance of the CO NAAQS through 2015, as described above. We have evaluated and determined that the Regulation No. 11 revisions described above are acceptable to us and we are approving them now in conjunction with this action.

VII. Consideration of Section 110(l) of the CAA

Section 110(l) of the CAA states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress towards attainment of a NAAQS or any other applicable requirement of the CAA. The revised Colorado Springs CO maintenance plan and revisions to Regulation No. 11 will not interfere with attainment, reasonable further progress, or any other applicable requirement of the CAA.

VIII. Final Action

In this action, EPA is approving the revised Colorado Springs CO revised maintenance plan, that was submitted by the Governor on April 12, 2004, and the revised transportation conformity motor vehicle CO emission budget for the year 2010 and beyond. We are also approving the Regulation No. 11 revisions submitted by the Governor on April 12, 2004.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the "Proposed Rules" section of today's **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective November 8, 2004 without further notice unless the Agency receives adverse comments by October 7, 2004. If the EPA receives adverse comments, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IX. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the

National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 8, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: August 26, 2004.

Robert E. Roberts,

Regional Administrator, Region VIII.

■ 40 CFR part 52 is amended to read as follows:

PART 52—[AMENDED]

■ 1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart G—Colorado

■ 2. Section 52.320 is amended by adding paragraph (c)(103) to read as follows:

§ 52.320 Identification of plan.

* * * * *

(c) * * *

(103) On April 12, 2004, the Governor of Colorado submitted revisions to Regulation No. 11 "Motor Vehicle Emissions Inspection Program" that eliminated the Federal applicability of the Basic I/M program for El Paso County and the Colorado Springs CO attainment/maintenance area.

(i) Incorporation by reference.

(A) Regulation No. 11 "Motor Vehicle Emissions Inspection Program", 5 CCR 1001–13, as adopted on December 18, 2003, effective March 1, 2004, as follows: Part A.I., "Applicability," final sentence of paragraph 2.

■ 3. Section 52.349 is amended by adding paragraph (j) to read as follows:

§ 52.349 Control strategy: Carbon monoxide.

* * * * *

(j) Revisions to the Colorado State Implementation Plan, carbon monoxide NAAQS, revised maintenance plan for Colorado Springs entitled "Revised Carbon Monoxide Maintenance Plan for the Colorado Springs Attainment/ Maintenance Area", as adopted by the Colorado Air Quality Control Commission on December 18, 2003, State effective March 1, 2004, and submitted by the Governor on April 12, 2004.

[FR Doc. 04–20134 Filed 9–3–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

[OPPT–2004–0043; FRL–7343–6]

RIN 2070–AC01

Storage of PCB Articles for Reuse; Availability of Supplemental Response to Comments Document

AGENCY: Environmental Protection Agency (EPA).

ACTION: Availability of Supplemental Response to Comments Document.

SUMMARY: In 1998, EPA promulgated a major revision of the rules governing use, manufacture, processing, distribution in commerce, and disposal of polychlorinated biphenyls (PCBs). One of these amendments created a new authorization for storing PCB Articles for reuse, subject to certain requirements. These requirements were challenged in court. While the U.S. Court of Appeals for the Fifth Circuit's (the Court) decision generally upheld the requirements, the Court directed EPA to more fully address comments submitted during the rulemaking process that requested a waiver from the storage for reuse requirements for the electric utility industry. EPA has prepared a Supplemental Response to Comments Document that addresses those comments. That document explains why the comments do not contradict EPA's judgment that additional restrictions on storage for reuse were necessary to prevent an unreasonable risk, and do not support a generic waiver from the storage for reuse requirements for the electric utility industry. The Supplemental Response to Comments Document has been added to the rulemaking record and is available to the public.

ADDRESSES: EPA has established a docket for this action under OPPT–2004–0043. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket/*. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the OPPT Docket, EPA Docket Center, EPA West, Rm. B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744, and the telephone number for the OPPT Docket, which is located in the EPA Docket Center, is (202) 566–0280.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Dave Hannemann, National Program Chemicals Division (7404T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 566–0508; e-mail address: *hannemann.dave@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an electric utility that stores PCB Articles for reuse. Potentially affected entities may include, but are not limited to:

- Utilities (NAICS 22), e.g., Facilities that store PCB Articles for reuse; Electric Power Generation, Transmission and Distribution Facilities.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in 40 CFR part 761. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to EDOCKET (*http://www.epa.gov/edocket/*), you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 761 is available on E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*.

To access information about PCBs, go directly to the PCB Home Page at *http://epa.gov/pcb*.

II. Background

A. What Action is the Agency Taking?

In 1998, EPA promulgated a major revision of the rules governing use, manufacture, processing, distribution in commerce, and disposal of PCBs at 40 CFR part 761 ("PCB Disposal Amendments") (Ref. 1). One of these amendments created a new authorization for storing PCB Articles (as defined at 40 CFR 761.3) for reuse (40 CFR 761.35), subject to certain requirements. These requirements were challenged in court. *Central and South West Services, et al,* v. *EPA*, 220 F.3d 683 (5th Cir. 2000) (Ref. 2). While the Court's decision generally upheld the requirements, the Court directed EPA to address comments submitted during the rulemaking process that requested a waiver from the storage for reuse requirements for the electric utility industry (Ref. 2). EPA has prepared a Supplemental Response to Comments Document that addresses those comments (Ref. 3).

1. *Rulemaking background.* Under the proposed rule, a PCB Article could have been stored for reuse outside of a regulated storage area for up to 3 years, so long as the equipment was maintained as if it were in use and the equipment was labeled. In addition, records would have to have been kept on the date the equipment was removed from use, what its future use would be, and when service or repair of the equipment was planned. EPA Regional Administrators could have waived the 3-year limit, if justified, at the owner or operator's request. EPA also requested comment on whether the rule should include provisions to allow site-specific or nationwide waivers or exemptions from the storage for reuse requirements (Ref. 4, p. 62822).

In proposing the storage for reuse requirements, EPA explained that it intended to prevent owners of PCB Articles from avoiding the disposal requirements for stored equipment by claiming that, despite the length of time the equipment had been in storage and its state of disrepair, they planned to reuse the equipment. EPA noted, "This activity constitutes illegal disposal and creates additional risks of environmental exposure to PCBs while the equipment is 'in storage for reuse.'" At the same time, EPA was aware of the need to balance the proposed restrictions against the "many legitimate instances which warrant the storage of PCB equipment for many years for the purpose of reuse as spares for critical components of electrical systems" (Ref. 4, pp. 62821–62823).

EPA published the proposed amendments to the storage for reuse rules on December 6, 1994, as part of the proposed PCB Disposal Amendments. The Agency originally stated that it would accept written comments on the proposal for 120 days after its publication (Ref. 4, p. 62788), but extended the comment period by an additional 30 days based on a request from the public (Ref. 5). On June 6 and 7, 1995, EPA held a public hearing on the proposed rule in Washington, DC, where the Agency took oral comments. An additional period for written reply comments followed the hearing. Copies of all written comments and a transcript of the hearing are in the official public record for that rulemaking.

Comments on the proposed rule, and EPA's responses, are discussed in the preamble to the final rule (Ref. 1, pp. 35399–35400) and in the Response to Comment Document (Ref. 6, p. 39). Commenters on the storage for reuse provision asked EPA to extend the proposed 3-year limit on storage for reuse outside of a regulated storage area. Commenters stated in particular that industries like pipelines and electric utilities needed a longer storage period because of the need to have replacement equipment at hand to maintain service during emergencies. In the final rule, EPA extended the 3-year limit for storage outside of a regulated storage area to 5 years, or for a longer period if the owner or operator has received the approval of the EPA Regional Administrator (40 CFR 761.35).

Commenters also disagreed with the proposed requirement to label equipment in storage for reuse, pointing out that it duplicated existing recordkeeping requirements. Based on these comments, EPA did not include the labeling requirement in the final rule. However, the final rule does retain the requirement that the owner or operator of equipment in storage for reuse keep a record of the location where the equipment will be used when removed from storage. This requirement is needed to distinguish an article in storage for reuse from one in storage for disposal.

Finally, electric utilities and natural gas pipeline and transmission companies objected to the provision of the proposal that would have allowed indefinite storage for reuse only in a storage area that met the requirements of § 761.65(b). The commenters argued that they could not always store equipment for reuse in a § 761.65(b) storage area, since, for this equipment to be available as emergency replacements, it had to be stored near the site where it would be used. The final rule, therefore, allows PCB Articles to be stored indefinitely in a § 761.65(b) storage area, or in a storage area permitted under the Resource Conservation and Recovery Act (RCRA) section 3004 or 3006.

Commenters from the electric utility industry requested that EPA grant a national variance from the storage for reuse provisions for the electric utility industry. The industry commented that electric utilities store equipment that is electrically sound and that does not present a risk, and that stored equipment is vital to maintaining a reliable power system. Other commenters asserted that the recordkeeping requirements would be costly and difficult to implement. Several commenters also suggested that

individual electric utilities that have comprehensive PCB programs in place should be exempt from the storage for reuse requirements. The final rule did not include a provision allowing the industry site-specific or nationwide waivers or exemptions from the storage for reuse requirements, because the commenters did not supply any data showing that the equipment stored for reuse at the commenters' facilities is maintained in such a way that it remains intact and non-leaking and therefore does not present a risk to health or the environment.

2. *Litigation background.* Several entities representing the electric utility industry (Central and South West Services, Inc., Entergy Services, Inc., Mississippi Power Company, and Utility Solid Waste Activities Group, collectively referred to hereinafter as "USWAG") petitioned for review of § 761.35 in the U.S. Court of Appeals for the Fifth Circuit (Ref. 7). USWAG asked the Court to vacate § 761.35 on the grounds that this section was not supported by substantial evidence in the record as a whole, and that, after soliciting comment whether to allow nationwide waivers of the storage for reuse rules, EPA failed to respond to comments arguing for such a waiver for the electric utility industry (Ref. 8, pp. 28–51).

The Court rejected USWAG's first argument, holding that the proper standard of review for challenges to EPA rules restricting or prohibiting the use of PCBs is whether the rules are arbitrary and capricious, a more deferential test than inquiring whether the rules are supported by substantial evidence. The Court further found that EPA's decision to strengthen the storage for reuse rules to prevent practices that pose an unreasonable risk to health and the environment was not arbitrary and capricious. On USWAG's second argument, the Court agreed that EPA had not adequately responded to the electric utility industry's comments requesting a waiver. Rather than vacating § 761.35, the Court remanded the rule to EPA to provide a reasoned statement of why it did not grant a national variance for the electric utility industry. The Court noted, "EPA may well be able to justify its decision to refuse to promulgate a national variance for the electric utilities and it would be disruptive to vacate a rule that applies to other members of the regulated community."

3. *EPA's response to industry's comments.* EPA has prepared a Supplemental Response to Comments Document on storage of PCB Articles for reuse that addresses the electric utility industry's comments requesting a waiver from § 761.35. That document explains why based both on the information provided by commenters and other information available to the Agency, that a generic waiver from the storage for reuse requirements for the electric utility industry was not warranted. Based on the available information, EPA believes that additional restrictions on storage for reuse are necessary to prevent an unreasonable risk to human health and the environment.

B. What is the Agency's Authority for Taking this Action?

The Supplemental Response to Comments Document that EPA is adding to the rulemaking record provides a reasoned statement of why EPA did not grant a national variance from the storage for reuse requirements at 40 CFR 761.35 for the electric utility industry, as directed by the U.S. Court of Appeals for the Fifth Circuit in *Central and South West Services, et al,* v. *EPA*, 220 F.3d 683 (5th Cir. 2000) (Ref.2).

III. References and Other Materials Added to the Rulemaking Record

1. U. S. Environmental Protection Agency (USEPA), OPPT. Disposal of Polychlorinated Biphenyls (PCBs); final rule. **Federal Register** (63 FR 35384, June 29, 1998) (FRL–5726–1).

2. U.S. Court of Appeals for the Fifth Circuit. *Central and South West Services, et al,* v. *United States Environmental Protection Agency.* Case No. 98–60495, August 15, 2000.

3. USEPA, OPPT, National Program Chemicals Division (NPCD). Supplemental Response to Comment Document on the Proposed Rule—Disposal of Polychlorinated Biphenyls. January 2004.

4. USEPA, OPPT. Disposal of Polychlorinated Biphenyls; proposed rule. **Federal Register** (59 FR 62788, December 6, 1994) (FRL–4167–1).

5. USEPA, OPPT. Disposal of Polychlorinated Biphenyls (PCBs); extension of comment period and notice of informal hearing. **Federal Register** (60 FR 17510, April 6, 1995) (FRL–4948–1).

6. USEPA, OPPT, NPCD. Response to Comment Document on the Proposed Rule—Disposal of Polychlorinated Biphenyls. May 1998.

7. Central and South West Services, Inc., Entergy Services, Inc., Mississippi Power Company, and the Utility Solid Waste Activities Group (USWAG). Petition for Review (5th Cir., August 7, 1998).

8. USWAG. Brief of Petitioners Central and South West Services, Inc., Entergy Services, Inc., Mississippi Power Company, and the Utility Solid Waste Activities Group (USWAG) (Case No. 98–60495, 5th Cir., April 27, 1999).

9. USEPA, Region VI, Dallas, TX. Complaint and Notice of Opportunity for Hearing, TSCA Docket No. VI-533C. September 27, 1991.

10. USEPA, Region VI, Dallas, TX. Consent Agreement and Consent Order, TSCA Docket No. VI-533C. June 11, 1992.

11. USEPA, Region VI, Dallas, TX. Complaint and Notice of Opportunity for Hearing, TSCA Docket No. VI-676C(P). December 31, 1996.

12. USEPA, Region VI, Dallas, TX. Consent Agreement and Consent Order, TSCA Docket No. VI-676C(P). June 30, 1997.

13. USEPA, Office of Toxic Substances (OTS). Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Use in Electrical Equipment; final rule. **Federal Register** (47 FR 37342, August 25, 1982).

14. USEPA. Information Collection Activities OMB Responses; notice. **Federal Register** (63 FR 57123, October 26, 1998) (FRL–6180–2).

List of Subjects in 40 CFR Part 761

Environmental protection, Hazardous substances, Polychlorinated biphenyls.

Dated: August 26, 2004.

Susan B. Hazen,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 04–20222 Filed 9–3–04; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 15

[ET Docket 03–201; FCC 04–165]

Unlicensed Devices and Equipment Approval

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document updates several technical rules for unlicensed radiofrequency devices of the Commission's rules. These rule changes will allow device manufacturers to develop expanded applications for unlicensed devices and will allow unlicensed device operators, including wireless Internet service providers'

greater flexibility to modify or substitute parts as long as the overall system operation is unchanged. We take these actions as part of our ongoing process of updating our rules to promote more efficient sharing of spectrum used by unlicensed devices and remove unnecessary regulations that inhibit such sharing.

DATES: Effective October 7, 2004, except for §§ 2.913(c), 2.926(c), 2.929(c) and 2.929(d) which contains information collection requirements that are not effective until approved by the Office of Management and Budget. The FCC will publish a document in the **Federal Register** announcing the effective date for those sections.

ADDRESSES: In addition to filing comments with the Office of the Secretary, 445 12th Street, SW., Washington, DC 20554, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to Leslie Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Leslie.Smith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: Neal McNeil, Office of Engineering and Technology, (202) 418–2408, TTY (202) 418–2989, e-mail: *Neal.McNeil@fcc.gov*.

For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Leslie Smith at 202–418–0217, or via the Internet at *Leslie.Smith@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, ET Docket 03–201, FCC 04–165, adopted July 8, 2004 and released July 12, 2004. The full text of this document is available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's duplication contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov*. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the FCC Consumer & Governmental Affairs Bureau at (202) 418–0531 (voice), (202) 418–7365 (TTY).

Paperwork Reduction Act of 1995 Analysis

The Report & Order contains modified information collection(s) requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection requirements contained in this R&O as required by the Paperwork Reduction Act of 1995 (PRA), Pub. L. 104–13. Public and agency comments are due November 8, 2004. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Pub. L. 107–198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might "further reduce the information collection burden for small business concerns with fewer than 25 employees." In this present document, we have assessed the effects of removing the paper filing provisions in §§ 2.913(c), 2.929(c) and 2.929(d) of the Commission's rules, and find that the changes will facilitate more efficient document filing and processing without placing additional burdens on small entities.

Summary of the Report and Order

Revisions to Part 15

Advanced Antenna Technologies

1. In the *Notice of Proposed Rulemaking*, (*NPRM*), 68 FR 68823, September 17, 2003, the Commission proposed to update § 15.247 of the rules to allow the use of more efficient antenna technologies with unlicensed devices. The regulations in effect at the time allowed only omnidirectional and directional antennas to be used with such devices. However, systems employing advanced antenna designs such as sectorized antennas and phased array adaptive antennas are now being used, or contemplated for use, as part of wide area network systems operating in the 2.4 GHz band. To date, the Commission has not generally authorized the operation of sectorized antennas by spread spectrum systems, but, by individual interpretation of its rules, we have allowed a few phased array systems to operate.

2. The Commission continues to believe that it is appropriate to revise § 15.247 to permit the use of advanced antenna systems in the 2.4 GHz band. The Commission is adopting our proposals with certain modifications based on the comments. First, The Commission is allowing advanced antenna systems, including sectorized and adaptive array systems, to operate with an aggregate transmit output power transmitted simultaneously on all beams of up to 8 dB above the limit for an individual beam.

3. Second, the Commission is adopting a requirement that the total EIRP on any beam may not exceed the EIRP limits for conventional point-to-point operation. The Commission is aware that during the course of normal operation it is possible that two beams may overlap while tracking associated mobile units. Because the effective radiated power along the path of overlap might exceed the power level permitted by a single beam, the Commission will require that the aggregate power transmitted simultaneously on overlapping beams be reduced to ensure that EIRP in the area of overlap does not exceed the limit for a single beam. Applications for equipment authorization must include the algorithm that will produce the maximum gain to ensure that the requirement will be met. For example, consider an antenna system that forms two separate beams both operating at the maximum permitted power. If the two beams were to overlap coverage area, then the power in each beam must be reduced in any proportion relative to the other in such a way that the total power in the overlap area does not exceed the maximum power allowed for one beam.

4. The Commission is not adopting a rule to restrict advanced antenna systems to 120° beamwidth. The Commission concludes that the EIRP limits, including the areas of overlap, will ensure that interference potential of the system is minimized, regardless of the beamwidth employed.

5. The rules we adopt herein are technologically neutral and will permit operation of various new and developing antenna technologies. Although the *NPRM* identified only sectorized and phased array systems as those that the Commission would consider under the revised rules, commenters have noted that other advanced antenna technologies are either under development or in use for various applications. Systems using technologies such as MIMO, space-time coding, and switched beam devices will be accommodated under the new rules.

6. The Commission is grandfathering existing advanced antenna systems that have already received an equipment authorization. These systems may continue to operate in accordance with the terms of the equipment authorization. New systems must comply with the rules adopted herein.

Replacement Antennas for Unlicensed Devices

7. Section 15.203 requires that intentional radiators be designed such that no antenna other than that supplied can be used with the device. The rules state that the device can be designed to

permit a broken antenna to be replaced by the user; however, the use of a standard antenna jack or electrical connector is prohibited. These rules are intended to prevent both intentional and unintentional circumvention of the part 15 emission limits by replacing a device's authorized antenna with an antenna having higher gain characteristics.

8. In order to support more flexible antenna requirements for unlicensed devices, the Commission proposed to allow that devices be authorized for use with multiple antennas. Although the Commission proposed to modify § 15.203 to implement the modifications, it believes that the changes are better suited for § 15.204. Accordingly, the Commission modifies § 15.204 to permit intentional radiators to be authorized with multiple antennas of similar in and out-of-band gain and radiation pattern. Compliance testing for the intentional radiator must be performed using the highest gain antenna that will be used with the device. The manufacturer must supply a list of other acceptable antennas in the literature delivered to the customer.

9. The Commission is not convinced, however, that the unique connector requirement should be eliminated. Thus, all replacement antennas authorized for use with an intentional radiator must incorporate a non-standard connector which uniquely couples with that intentional radiator. The Commission remains concerned that removing this requirement could make it easier for parties to attach unauthorized high gain antennas or linear amplifiers to unlicensed devices in violation of the rules. Of even greater importance, however, is the Commission's concern that removing this requirement might have the unintended consequence of allowing uninformed consumers to inadvertently attach an antenna which causes the device to emit at levels in excess of the limits for human exposure to radio emissions. For these reasons, the Commission will continue to require that unlicensed devices use non-standard antenna connectors as currently required in § 15.203.

10. The Commission will also remove the § 15.407(d) requirement that devices designed to operate in the 5.15 GH_z–5.25 GH_z U–NII band incorporate an integrated antenna. In light of the fact that manufacturers are designing equipment that is capable of operating across multiple unlicensed bands, the Commission concludes that it is impractical to maintain separate antenna requirements for each band in which a device my operate. Removal of this requirement will not present a significant interference risk because the modified § 15.204 rules will ensure that any replacement antenna used with a device will not cause emissions to exceed authorized levels. Furthermore, the requirement that U–NII band devices incorporate a non-standard connector which couples only to the transmitter with which it is authorized will provide assurance that unauthorized antennas will not be used with the devices.

Flexible Equipment Authorization for Radio Transmission Systems

11. Section 15.205 of the rules prohibits marketing of external radio frequency amplifiers, except as part of a complete transmission system consisting of an intentional radiator, external radio frequency amplifier and antenna. In the *NPRM*, the Commission proposed to allow marketing of separate radio frequency power amplifiers on a limited basis. The Commission proposed to restrict such marketing to amplifiers that are only capable of operation under the digitally modulated devices rules in § 15.247 and under the U–NII rules for the 5750–5850 MH_z band. These are the rules under which most unlicensed wireless broadband devices operate. Further, the Commission proposed to require that the parties responsible for such amplifiers obtain an equipment authorization (certification) and demonstrate that the device cannot operate with an output power of more than 1 Watt, the maximum power permitted under the rules. Consumers and businesses would then have the ability to obtain a separate amplifier if they find the device they have purchased has insufficient operating range to meet their needs.

12. The Commission adopted rules to allow external amplifiers to be marketed separately if they are designed in such a way that they can only be used with a specific system that is covered by an equipment authorization, such as through use of a unique connector or via an electronic handshake with a host device. The amplifiers must have a proprietary connection both into the amplifier and into the associated routers and access points with which they are FCC approved to work so that consumers with any other routers or access points cannot use them. The output power of such an amplifier must not exceed the maximum permitted output power of the system with which it is authorized. In addition, the Commission is requiring that the amplifiers will be sold with a notice that they are to be used only in conjunction with the routers and access points for which they have been approved. A description or listing of the devices with which the amplifier can be used must appear on the outside packaging as well as in the user manual for the amplifier. The amplifiers must not be used to circumvent regulations regarding output power. For example, an amplifier may not be used to increase the output power of a system that is otherwise limited to 125 mW to a higher power. The party responsible for ensuring compliance with Commission regulations shall illustrate, during the equipment authorization process, the method used to prohibit unauthorized power increases. The marketing of RF amplifiers that are not FCC certified to be used as part of a specific system will continue to be prohibited.

Measurement Procedures for Digital Modulation Systems

13. In the *NPRM*, the Commission explained that unlicensed devices designed to use digital modulation techniques may be authorized under either the U–NII rules (Subpart E) or § 15.247 of part 15. When operating under either of these requirements the devices are limited to 1 watt maximum output power. However, the method used to determine the maximum power varies for U–NII and spread spectrum devices. Specifically, the output power measurement required under the Commission's U–NII device test procedure is an RMS average measurement, while the output power measurement required under the Commission's digitally-modulated spread spectrum device test procedure is a measurement of the overall peak emission. In adopting the U–NII rules, the Commission recognized that digital modulation techniques often display short duration peaks that do not cause increased interference to other operations. Measuring the peak level of short duration spikes overestimates interference potential. Accordingly, the Commission established measurement procedures for digital U–NII devices which allow for averaging output power in order to disregard these insignificant spikes.

14. In the *NPRM*, the Commission proposed to harmonize the measurement procedures for digital modulation devices authorized under § 15.247 with the digital U–NII devices authorized under § 15.407. Specifically, the Commission proposed to allow entities performing compliance testing for § 15.247 devices to use an average, rather than overall peak, emission as provided by § 15.407, paragraphs (a)(4) and (a)(5) when measuring transmit

power. The Commission proposed this change for devices using digital modulation that operate in the 915 MH_z, 2.4 GH_z and 5.7 GH_z bands.

15. The Commission believes that it is important to maintain consistent treatment of similar technologies regardless of the rule § under which it is authorized. Therefore, as proposed in the *NPRM*, the Commission will modify § 15.247 to permit the determination of the output power of a digitally modulated system by the same methods used to determine output power of systems operating pursuant to the U–NII rules. This measurement, in both cases, may be taken as an average power measurement as described in the Public Notice, "Measurement Procedure Updated for Peak Transmit Power in the Unlicensed National Information Infrastructure (U–NII) Bands," DA 02–2138, 17 FCC Rcd 16521, August 30, 2002.

16. The Commission is not removing the existing measurement requirements for § 15.247 devices from the rules; instead, the new measurement procedure can be used optionally for digitally modulated § 15.247 devices. However, in order to address the concern of increased out-of-band emissions from devices authorized under § 15.247, we will require that if emissions are measured using the average power procedure, then out-of-band emission must be reduced to 30 dB below the level of the device's fundamental frequency.

17. The optional measurement procedure will be applicable to digitally modulated devices in the 915 MH_z, 2.4 GH_z and 5.7 GH_z bands. The Commission is not persuaded by Itron's comments to exclude the 915 MH_z band. Itron argues that using an average rather than peak power output measurement would result in higher-power devices being permitted to operate in the band. It states that changing the testing procedure could be detrimental to tens of millions of devices operating in the 915 MH_z band. The Commission finds that Itron has not made a significant showing to warrant exclusion of the 915 MH_z band from the revised regulations. The Commission continues to believe that these changes will benefit operators in the 915 MH_z band equally as well as operators in the 2.4 GH_z and 5.7 GH_z bands without resulting in increased risk of interference.

Frequency Hopping Channel Spacing Requirements

18. The Commission proposed to modify the frequency hopping spacing requirement to permit certain systems in the 2.4 GH_z band to utilize hopping channels separated by either 25 KH_z or two-thirds of the 20 dB bandwidth, whichever is greater. The Commission stated that although a single device's channels will not overlap in time, the operation of multiple devices using the new modulation technique simultaneously in a given area may cause the spectral occupancy and power density to increase, leading to an increased risk of interference. Therefore, the Commission sought comment on the interference potential of new waveforms with more gradual roll-off and potentially higher spectral power densities at the channel band edges.

19. The Commission believes that our proposal to modify the frequency hopping spacing requirement in the 2.4 GH_z band will provide for more spectrally efficient technologies. The Commission is therefore adopting our proposal. The Commission agrees with the commenters that the relaxed frequency hopping spacing requirement proposed should not be limited to systems using 75 or fewer channels. The Commission is therefore adopting the language that will not limit flexibility to systems using 75 or fewer channels. Frequency hopping systems that operate under the revised spacing rules will be limited to an output power of 125 mW.

20. The Commission is not extending this provision to the 915 MH_z band as requested. There are additional concerns with regard to altering the separation distances for frequency hopping systems in the 915 MH_z band. In particular, the 915 MH_z band has only 28 megahertz of available spectrum as opposed to 83.5 megahertz of spectrum in the 2.4 GH_z band. Because there is less spectrum available, wider skirts would have a greater impact. The Commission does not have sufficient information about the affects that modifying the spacing requirements would have on existing users of the band. Therefore, the Commission is not changing the channel spacing requirements for the 915 MH_z band at this time.

Improving Sharing in the Unlicensed Bands

21. The Commission declines to impose any type of spectrum etiquette for the part 15 bands that are the subject of this proceeding because they are already heavily used. The Commission believes that design flexibility has helped industry to develop efficient sharing and modulation schemes. It appears that the existing regulations have resulted in very efficient use of available unlicensed spectrum. However, the Commission also finds that the recommendations advanced by Microsoft have merit and should be taken under consideration. In particular, the Commission finds that Microsoft's suggestions may prove beneficial as the Commission proceeds in making additional spectrum available for unlicensed operation. For example, the Commission now has under consideration a *Notice of Proposed Rulemaking*, 69 FR 34103, June 18, 2004, seeking comment on issues related to allowing unlicensed devices to operate in unused portions, or "White Spaces," in the TV broadcast spectrum. The Commission notes that a device operating in accordance with the suggested guidelines could more effectively share the broadcast band, minimizing the risk of interference to both TV stations and other unlicensed devices. The Commission will take into consideration possible requirements such as these as it contemplates making additional spectrum available for the operation of unlicensed devices.

Part 15 Unlicensed Modular Transmitter Approvals

22. In the *NPRM*, the Commission also proposed to clarify the equipment authorization requirements for modular transmitters. However, because there are complex and evolving issues associated with modular transmitters, the Commission determined that further information is needed before reasonable guidelines can be developed. Accordingly, the Commission will address this matter in a later Commission action.

Special Temporary Authority

23. The Commission proposed to delete the provisions in § 15.7 of the rules for obtaining a Special Temporary Authority (STA) to operate intentional or unintentional radiation devices not conforming to the part 15 rules. The Commission noted that the Office of Engineering and Technology has not granted any STAs under part 15 nor had any formal requests for an STA under these rules in the last 10 years. The Commission further noted that this need is being met through the allowances for STAs under the provisions in part 5 for experimental licenses.

24. Only Globespan Virata filed comments on this subject. It expresses support for removing the Special Temporary Authority provisions. The Commission concludes that the STA provisions of part 15 are no longer needed. The lack of interested parties commenting on this topic provides a further indication that the rule section has outlived its usefulness. Therefore, as proposed in the *NPRM*, the Commission deletes § 15.7 from the rules. STAs to

operate intentional or unintentional radiation devices not conforming to the part 15 rules will continue to be granted, as appropriate, under the experimental licensing provisions of part 5.

Revisions to Part 2

Import Conditions

25. In a comment filed in response to the 2002 Regulatory Flexibility Act Review, Hewlett-Packard Company (HP) asked that the Commission increase the number of devices not intended for use in a licensed service that may be imported to 2000 or fewer for testing and evaluation and 100 or fewer for demonstration purposes. HP further requests that the modified rules be expanded to permit demonstration prototypes to be used, in addition to trade shows, for any other purpose designed to build market awareness. As an alternative to the suggested rule changes, HP states that the Commission could consider combining §§ 2.1204(a)(3) and 2.1204(a)(4) to create a limit of 2100 devices for all pre-authorized units to be used for, "design refinement, software development, marketing and customer support program development, or any other needed product development purpose, including promoting market awareness." HP contends that this relaxation of the import regulations would more accurately reflect the manufacturing and marketing procedures in use today.

26. The Commission proposed to relax the import restrictions as requested by HP. However, the Commission also expressed concern that increasing the limit as HP requests might encourage some manufacturers to import far more devices than necessary and to request an exception to import an even greater number of devices, without sufficient cause. The Commission sought comment on both the necessity of increasing the importation limit and the possibility of abuse of a revised rule.

27. The Commission does not believe that commenters have made a compelling argument supporting the need for a modification to the importation regulations. The Commission routinely receives requests to import products in greater numbers than provided for in the current rules. Such requests are generally processed with little delay. To be more specific, our Office of Engineering and Technology Laboratory processes, on average, only about twenty-five such requests per year. This limited number of requests does not impose a significant administrative burden on the Commission. Furthermore, the requests are useful to our staff because they indicate how many devices are being imported prior to authorization. The Commission remains concerned that relaxation of the import rules might result in an unnecessary influx of excess equipment and increase the likelihood that manufacturers will lose track of unauthorized devices. Accordingly, the Commission declines to modify the § 2.1204 importation regulations.

Electronic Filing

28. The Commission proposed three changes which it believed would streamline our filing process by reducing paperwork burdens and further our efforts to comply with the E-Government initiative. Specifically, it proposed to 1) delete the provisions for paper filing of an application for Certification in § 2.913, noting that no requests to submit paper filings had been received in the past five years; 2) modify § 2.926(c) to require electronic filing for all grantee code assignment requests, and; 3) modify §§ 2.929(c) and (d) to require electronic filing for all changes in address, company name, contact person, and control/sale of the grantee.

29. With the support of commenters, the Commission concludes that the paper filing provisions in §§ 2.913(c), 2.926(c), 2.929(c), and 2.929(d) of the rules are unnecessary and outdated. The proposed revisions would facilitate more efficient document filing and processing. Therefore, the Commission will make the changes to §§ 2.913(c), 2.926(c), 2.929(c), and 2.929(d) as proposed in the *NPRM*.

Accreditation of Test Laboratories

30. The Commission observed that the rules do not address re-evaluation intervals for laboratories that test devices for part 15 and part 18 compliance. Accrediting bodies that evaluate the laboratories generally determine these intervals themselves. While domestic laboratories are generally re-evaluated at two-year intervals, some Accrediting Bodies reassess foreign laboratories only every 7 years. The Commission indicated that it is important that all laboratories, both foreign and domestic, be re-certified on a common interval. Therefore, the Commission proposed to modify § 2.948 to clarify that all test sites, both foreign and domestic, must be reassessed by their Accrediting Body every two years. The Commission proposed to modify § 2.962(e)(1) to clarify that every Telecommunications Certification Body must be re-accredited every 2 years for continued accreditation.

31. The Commission modified § 2.948 to clarify that all test sites must be reassessed by their Accrediting Body every two years. Additionally, the Commission is modifying § 2.962 by adding a new paragraph (c)(7) to clarify that every Telecommunications Certification Body must ~~be re~~assessed on two-year intervals.

Miscellaneous

32. Finally, the Commission makes an editorial change to § 15.31(a)(3) to update the reference to ANSI C63.4 to its newest version. Specifically, the Commission is replacing "ANSI C63.4–2001" with "ANSI C63.4–2003." The Note to paragraph (a)(3) remains unchanged.

Final Regulatory Flexibility Analysis

33. As required by the Regulatory Flexibility Act ("RFA"),[1] an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated in the *Notice of Proposed Rule Making ("NPRM")*, ET Docket 03–201. The Commission sought written public comment on the proposals in the *Notice*, including comment on the IRFA. We find that the rules adopted in the Report and Order will not have a significant economic impact on a substantial number of small entities.[2] The Commission has nonetheless provided this Final Regulatory Flexibility Analysis ("FRFA") to provide a fuller record in this proceeding. This FRFA conforms to the RFA.[3]

A. Need for, and Objectives of, the Report and Order

34. Section 11 of the Communications Act of 1934, as amended, and § 202(h) of the Telecommunications Act of 1996 require the Commission (1) to review biennially its regulations pertaining to telecommunications service providers and broadcast ownership; and (2) to determine whether economic competition has made those regulations no longer necessary in the public interest. The Commission is directed to modify or repeal any such regulations that it finds are no longer in the public interest.

35. On September 6, 2002, the Commission released a *Public Notice* seeking comments regarding Commission rules which may be

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601—612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. 104–121, Title II, 110 Stat. 857 (1996).

[2] Thus, we could certify that an analysis is not required. *See* 5 U.S.C. 605(b).

[3] *See* 5 U.S.C. 604.

outdated and in need of revision.[4] The *Public Notice* identified a number of rule sections in parts 2 and 15 as candidates for review, and encouraged interested parties to provide comment on these rules. Subsequently, on September 26, 2002, the Commission released a separate *Public Notice* seeking suggestions as to which rule parts administered by the Commission's Office of Engineering and Technology should be modified or repealed as part of the 2002 biennial review.[5] Some of the comments filed in response to these *Public Notices* were addressed by *NPRM*. The *NPRM* also addressed other issues raised as a result of recent changes in technology.

36. The *NPRM* proposed several changes to parts 2, 15 and other parts of the rules. Specifically, it proposed to:

(1) modify the rules to permit the use of advanced antenna technologies with spread spectrum devices in the 2.4 GHz band;

(2) modify the replacement antenna restriction for part 15 devices;

(3) modify the equipment authorization procedures to provide more flexibility to configure transmission systems without the need to obtain separate authorization for every combination of system components;

(4) harmonize the measurement procedures for digital modulation systems authorized pursuant to § 15.247 of the rules with those for similar U-NII devices authorized under §§ 15.401–15.407 of the rules;[6]

(5) modify the channel spacing requirements for frequency hopping spread spectrum devices in the 2.4 GHz band in order to remove barriers to the introduction of new technology that uses wider bandwidths;

(6) clarify the equipment authorization requirements for modular transmitters; and

(7) make other changes to update or correct parts 2 and 15 of our rules.

37. These proposals would prove beneficial to manufacturers and users of unlicensed technology, including those who provide services to rural communities. Specifically, the Commission noted that a growing number of service providers are using unlicensed devices within wireless networks to serve the varied needs of industry, government, and general consumers alike. One of the more interesting developments is the emergence of wireless Internet service providers or "WISPs." Using unlicensed devices, WISPs around the country are providing an alternative high-speed connection in areas where cable or DSL services have been slow to arrive. The Commission believes that the increased flexibility proposed in the *NPRM* would help to foster a viable last mile solution for delivering Internet services, other data applications, or even video and voice services to underserved, rural, or isolated communities.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

38. No comments were filed in response to the IRFA.

C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

39. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[7] The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern" under Section 3 of the Small Business Act.[8] Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operations; and (3) meets may additional criteria established by the Small Business Administration (SBA).[9]

40. The rules adopted in the *Report and Order* pertains to manufacturers of unlicensed communications devices. The appropriate small business size standard is that which the SBA has established for radio and television broadcasting and wireless communications equipment manufacturing. This category encompasses entities that primarily manufacture radio, television, and wireless communications equipment.[10] Under this standard, firms are considered small if they have 750 or fewer employees.[11] Census Bureau data for 1997 indicate that, for that year, there were a total of 1,215 establishments[12] in this category.[13] Of those, there were 1,150 that had employment under 500, and an additional 37 that had employment of 500 to 999. The percentage of wireless equipment manufacturers in this category is approximately 61.35%,[14] so the Commission estimates that the number of wireless equipment manufacturers with employment under 500 was actually closer to 706, with an additional 23 establishments having employment of between 500 and 999. Given the above, the Commission estimates that the great majority of wireless communications equipment manufacturers are small businesses.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

41. Part 15 transmitters are already required to be authorized under the Commission's certification procedure as a prerequisite to marketing and importation. *See* 47 CFR 15.101, 15.201, 15.305, and 15.405. The changes adopted in this proceeding would not change any of the current reporting or recordkeeping requirements. Further, the regulations add permissible measurement techniques and methods of operation. The rules would not require the modification of any existing products.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

42. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of

[4] *See Public Notice, "FCC Seeks Comment Regarding Possible Revision or Elimination of Rules Under The Regulatory Flexibility Act,* 5 U.S.C. 610," released September 6, 2002, DA 02–2152.

[5] *See Public Notice, "The Commission Seeks Public Comment in the 2002 Biennial Review of Telecommunications Regulations within the Purview of the Office of Engineering and Technology,"* released September 26, 2002, ET Docket No. 02–312.

[6] 47 CFR 15.247

[7] *See* U.S.C. 603(b)(3).

[8] *Id.* 601(3).

[9] *Id.* 632.

[10] NAICS code 334220.

[11] *Id.*

[12] The number of "establishments" is a less helpful indicator of small business prevalence in this context than would be the number of "firms" or "companies," because the latter take into account the concept of common ownership or control. Any single physical location for an entity is an establishment, even though that location may be owned by a different establishment. Thus, the numbers given may reflect inflated numbers of businesses in this category, including the numbers of small businesses. In this category, the Census breaks-out data for firms or companies only to give the total number of such entities for 1997, which was 1,089.

[13] U.S. Census Bureau, 1997 Economic Census, Industry Series: Manufacturing, "Industry Statistics by Employment Size," Table 4, NAICS code 334220 (issued August 1999).

[14] *Id.* Table 5, "Industry Statistics by Industry and Primary Product Class Specialization: 1997."

performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

43. At this time, the Commission does not believe the rule changes contained in this Report and Order will have a significant economic impact on small entities. The *Report and Order* does not impose new device design standards. Instead, it relaxes the rules with respect to the types of devices which are allowed to operate pursuant to the Commission's regulations. There is no burden of compliance with the changes. Manufacturers may continue to produce devices which comply with the former rules and, if desired, design devices to comply with the new regulations. The rules will apply equally to large and small entities. Therefore, there is no inequitable impact on small entities. Finally, the *Report and Order* does not include a deadline for implementation. The Commission believes that the rules are relatively simple and do not require a transition period to implement. An entity desiring to take advantage of the relaxed regulations may do so at any time.

44. The Commission finds that the rule changes contained in this *Report and Order* will not present a significant economic burden to small entities.

F. Congressional Review Act.

45. The Commission will send a copy of the Report and Order, in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, *See* 5 U.S.C. 801(a)(1)(A).

Ordering Clauses

46. Parts 2 and 15 of the Commission's rules ARE AMENDED as specified in Rule Changes, effective October 7, 2004, except for §§ 2.913(c), 2.926(c), 2.929(c) and 2.929(d) which contains information collection requirements that are not effective until approved by the Office of Management and Budget. The FCC will publish a document in the **Federal Register** announcing the effective date for those sections. This action is taken pursuant to the authority contained in sections 4(i), 301, 302, 303(e), 303(f), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 301, 302, 303(e), 303(f), and 303(r).

47. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of the *Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Parts 2 and 15

Communications equipment.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 2 and 15 to read as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303 and 336, unless otherwise noted.

■ 2. Section 2.913 is revised to read as follows:

§ 2.913 Submittal of equipment authorization application or information to the Commission.

(a) All applications for equipment authorization must be filed electronically via the Internet. Information on the procedures for electronically filing equipment authorization applications can be obtained from the address in paragraph (c) of this section and from the Internet at *https://gullfoss2.fcc.gov/prod/oet/cf/eas/index.cfm*.

(b) Unless otherwise directed, fees for applications for the equipment authorization, pursuant to § 1.1103 of this chapter, must be submitted either electronically via the Internet at *https://gullfoss2.fcc.gov/prod/oet/cf/eas/index.cfm* or by following the procedures described in § 0.401(b) of this chapter. The address for fees submitted by mail is: Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251–5315. If the applicant chooses to make use of an air courier/package delivery service, the following address must appear on the outside of the package/envelope: Federal Communications Commission, c/o Mellon Bank, Mellon Client, Service Center, 500 Ross Street—Room 670, Pittsburgh, PA 15262–0001.

(c) Any equipment samples requested by the Commission pursuant to the provisions of subpart J of this part shall, unless otherwise directed, be submitted to the Federal Communications Commission Laboratory, 7435 Oakland Mills Road, Columbia, Maryland, 21046.

■ 3. Section 2.926 is amended by revising introductory text to paragraph (c) to read as follows:

§ 2.926 FCC identifier.

* * * * *

(c) A grantee code will have three characters consisting of Arabic numerals, capital letters, or combination thereof. A prospective grantee or his authorized representative may receive a grantee code electronically via the Internet at *https://gullfoss2.fcc.gov/prod/oet/cf/eas/index.cfm*. The code may be obtained at any time prior to submittal of the application for equipment authorization. However, the fee required by § 1.1103 of this chapter must be submitted and validated within 30 days of the issuance of the grantee code, or the code will be removed from the Commission's records and a new grantee code will have to be obtained.

* * * * *

■ 4. Section 2.929 is amended by revising paragraphs (c) and (d) to read as follows:

§ 2.929 Changes in name, address, ownership or control of grantee.

(c) Whenever there is a change in the name and/or address of the grantee of an equipment authorization, notice of such change(s) shall be submitted to the Commission via the Internet at *https://gullfoss2.fcc.gov/prod/oet/cf/eas/index.cfm* within 30 days after the grantee starts using the new name and/or address.

(d) In the case of transactions affecting the grantee, such as a transfer of control or sale to another company, mergers, or transfer of manufacturing rights, notice must be given to the Commission via the Internet at *https://gullfoss2.fcc.gov/prod/oet/cf/eas/index.cfm* within 60 days after the consummation of the transaction. Depending on the circumstances in each case, the Commission may require new applications for equipment authorization. In reaching a decision the Commission will consider whether the acquiring party can adequately ensure and accept responsibility for continued compliance with the regulations. In general, new applications for each device will not be required. A single application for equipment authorization may be filed covering all the affected equipment.

■ 5. Section 2.948 is amended by revising paragraphs (a)(2) and (d) to read as follows:

§ 2.948 Description of measurement facilities.

(a) * * *

(2) If the equipment is to be authorized by the Commission under the certification procedure, the party performing the measurements shall be accredited for performing such

measurements by an authorized accreditation body based on the International Organization for Standardization/International Electrotechnical Commission (ISO/IEC) Guide 25, "General Requirements for the Competence of Calibration and Testing Laboratories." Accreditation bodies must be approved by the FCC's Office of Engineering and Technology, as indicated in § 0.241 of this chapter, to perform such accreditation based on ISO/IEC 58, "Calibration and Testing Laboratory Accreditation Systems—General Requirements for Operation and Recognition." The frequency for revalidation of the test site and the information required to be filed or retained by the testing party shall comply with the requirements established by the accrediting organization. However, in all cases, test site revalidation shall occur on an interval not to exceed two years.

* * * * *

(d) A laboratory that has been accredited with a scope covering the required measurements shall be deemed competent to test and submit test data for equipment subject to verification, Declaration of Conformity, and certification. Such a laboratory shall be accredited by an approved accreditation organization based on the International Organization for Standardization/International Electrotechnical Commission (ISO/IEC) Standard 17025, "General Requirements for the Competence of Calibration and Testing Laboratories." The organization accrediting the laboratory must be approved by the Commission's Office of Engineering and Technology, as indicated in § 0.241 of this chapter, to perform such accreditation based on ISO/IEC 58, "Calibration and Testing Laboratory Accreditation Systems—General Requirements for Operation and Recognition." The frequency for revalidation of the test site and the information that is required to be filed or retained by the testing party shall comply with the requirements established by the accrediting organization. However, in all cases, test site revalidation shall occur on an interval not to exceed two years.

* * * * *

■ 6. Section 2.962 is amended by revising paragraphs (c)(3), (c)(4), (e) introductory text, (e)(1), (f)(1), (f)(3), and (g)(3), and by adding paragraph (c)(7), to read as follows:

§ 2.962 Requirements for a Telecommunications Certification Body.

* * * * *

(c) * * *

(3) The TCB shall have the technical expertise and capability to test the equipment it will certify and shall also be accredited in accordance with ISO/IEC Standard 17025 to demonstrate it is competent to perform such tests.

(4) The TCB shall demonstrate an ability to recognize situations where interpretations of the regulations or test procedures may be necessary. The appropriate key certification and laboratory personnel shall demonstrate a knowledge of how to obtain current and correct technical regulation interpretations. The competence of the Telecommunication Certification Body shall be demonstrated by assessment. The general competence, efficiency, experience, familiarity with technical regulations and products included in those technical regulations, as well as compliance with applicable parts of the ISO/IEC Standard 17025 and Guide 65, shall be taken into consideration.

* * * * *

(7) A TCB shall be reassessed for continued accreditation on intervals not exceeding two years.

* * * * *

(e) *Designation of a TCB.* (1) The Commission will designate as a TCB any organization that meets the qualification criteria and is accredited by NIST or its recognized accreditor.

* * * * *

(f) * * *

(1) A TCB shall certify equipment in accordance with the Commission's rules and policies.

* * * * *

(3) A TCB may establish and assess fees for processing certification applications and other tasks as required by the Commission.

* * * * *

(g) * * *

(3) If during post market surveillance of a certified product, a TCB determines that a product fails to comply with the applicable technical regulations, the Telecommunication Certification Body shall immediately notify the grantee and the Commission. A follow-up report shall also be provided within thirty days of the action taken by the grantee to correct the situation.

* * * * *

PART 15—RADIO FREQUENCY DEVICES

■ 7. The authority citation for part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 304, 307, 336, and 544A.

§ 15.7 [Removed]

■ 8. Section 15.7 is removed.

■ 9. Section 15.31 is amended by revising paragraph (a)(3) to read as follows:

§ 15.31 Measurement standards.

(a) * * *

* * * * *

(3) Other intentional and unintentional radiators are to be measured for compliance using the following procedure excluding sections 4.1.5.2, 5.7, 9 and 14: ANSI C63.4–2003: "Methods of Measurement of Radio-Noise Emissions from Low-Voltage Electrical and Electronic Equipment in the Range of 9 kHz to 40 GHz" (incorporated by reference, see § 15.38). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

* * * * *

■ 10. Section 15.38 is amended by revising paragraph (b)(6) to read as follows:

§ 15.38 Incorporation by reference.

* * * * *

(b) * * *

(6) ANSI C63.4–2003: "Methods of Measurement of Radio-Noise Emissions from Low-Voltage Electrical and Electronic Equipment in the Range of 9 kHz to 40 GHz," 2003, IBR approved for § 15.31, except for sections 4.1, 5.2, 5.7, 9 and 14.

* * * * *

■ 11. Section 15.204 is revised to read as follows:

§ 15.204 External radio frequency power amplifiers and antenna modifications.

(a) Except as otherwise described in paragraphs (b) and (d) of this section, no person shall use, manufacture, sell or lease, offer for sale or lease (including advertising for sale or lease), or import, ship, or distribute for the purpose of selling or leasing, any external radio frequency power amplifier or amplifier kit intended for use with a part 15 intentional radiator.

(b) A transmission system consisting of an intentional radiator, an external radio frequency power amplifier, and an antenna, may be authorized, marketed and used under this part. Except as described otherwise in this section, when a transmission system is authorized as a system, it must always be marketed as a complete system and must always be used in the configuration in which it was authorized.

(c) An intentional radiator may be operated only with the antenna with which it is authorized. If an antenna is marketed with the intentional radiator,

it shall be of a type which is authorized with the intentional radiator. An intentional radiator may be authorized with multiple antenna types.

(1) The antenna type, as used in this paragraph, refers to antennas that have similar in-band and out-of-band radiation patterns.

(2) Compliance testing shall be performed using the highest gain antenna for each type of antenna to be certified with the intentional radiator. During this testing, the intentional radiator shall be operated at its maximum available output power level.

(3) Manufacturers shall supply a list of acceptable antenna types with the application for equipment authorization of the intentional radiator.

(4) Any antenna that is of the same type and of equal or less directional gain as an antenna that is authorized with the intentional radiator may be marketed with, and used with, that intentional radiator. No retesting of this system configuration is required. The marketing or use of a system configuration that employs an antenna of a different type, or that operates at a higher gain, than the antenna authorized with the intentional radiator is not permitted unless the procedures specified in § 2.1043 of this chapter are followed.

(d) Except as described in this paragraph, an external radio frequency power amplifier or amplifier kit shall be marketed only with the system configuration with which it was approved and not as a separate product.

(1) An external radio frequency power amplifier may be marketed for individual sale provided it is intended for use in conjunction with a transmitter that operates in the 902–928 MHz, 2400–2483.5 MHz, and 5725–5850 MHz bands pursuant to § 15.247 of this part or a transmitter that operates in the 5.725–5.825 GHz band pursuant to § 15.407 of this part. The amplifier must be of a design such that it can only be connected as part of a system in which it has been previously authorized. (The use of a non-standard connector or a form of electronic system identification is acceptable.) The output power of such an amplifier must not exceed the maximum permitted output power of its associated transmitter.

(2) The outside packaging and user manual for external radio frequency power amplifiers sold in accordance with paragraph (d)(1) of this section must include notification that the amplifier can be used only in a system which it has obtained authorization. Such a notice must identify the authorized system by FCC Identifier.

■ 12. Section 15.247 is amended by revising paragraphs (a), (b) introductory text, (b)(1), (b)(3), (b)(4) introductory text, (c), (d), and by adding paragraph (e) to read as follows:

§ 15.247 Operation within the bands 902–928 MHz, 2400–2483.5 MHz, and 5725–5850 MHz.

(a) Operation under the provisions of this Section is limited to frequency hopping and digitally modulated intentional radiators that comply with the following provisions:

(1) Frequency hopping systems shall have hopping channel carrier frequencies separated by a minimum of 25 kHz or the 20 dB bandwidth of the hopping channel, whichever is greater. Alternatively, frequency hopping systems operating in the 2400–2483.5 MHz band may have hopping channel carrier frequencies that are separated by 25 kHz or two-thirds of the 20 dB bandwidth of the hopping channel, whichever is greater, provided the systems operate with an output power no greater than 125 mW. The system shall hop to channel frequencies that are selected at the system hopping rate from a pseudo randomly ordered list of hopping frequencies. Each frequency must be used equally on the average by each transmitter. The system receivers shall have input bandwidths that match the hopping channel bandwidths of their corresponding transmitters and shall shift frequencies in synchronization with the transmitted signals.

(i) For frequency hopping systems operating in the 902–928 MHz band: if the 20 dB bandwidth of the hopping channel is less than 250 kHz, the system shall use at least 50 hopping frequencies and the average time of occupancy on any frequency shall not be greater than 0.4 seconds within a 20 second period; if the 20 dB bandwidth of the hopping channel is 250 kHz or greater, the system shall use at least 25 hopping frequencies and the average time of occupancy on any frequency shall not be greater than 0.4 seconds within a 10 second period. The maximum allowed 20 dB bandwidth of the hopping channel is 500 kHz.

(ii) Frequency hopping systems operating in the 5725–5850 MHz band shall use at least 75 hopping frequencies. The maximum 20 dB bandwidth of the hopping channel is 1 MHz. The average time of occupancy on any frequency shall not be greater than 0.4 seconds within a 30 second period.

(iii) Frequency hopping systems in the 2400–2483.5 MHz band shall use at least 15 channels. The average time of occupancy on any channel shall not be greater than 0.4 seconds within a period of 0.4 seconds multiplied by the number of hopping channels employed. Frequency hopping systems may avoid or suppress transmissions on a particular hopping frequency provided that a minimum of 15 channels are used.

(2) Systems using digital modulation techniques may operate in the 902–928 MHz, 2400–2483.5 MHz, and 5725–5850 MHz bands. The minimum 6 dB bandwidth shall be at least 500 kHz.

(b) The maximum peak conducted output power of the intentional radiator shall not exceed the following:

(1) For frequency hopping systems operating in the 2400–2483.5 MHz band employing at least 75 non-overlapping hopping channels, and all frequency hopping systems in the 5725–5850 MHz band: 1 watt. For all other frequency hopping systems in the 2400–2483.5 MHz band: 0.125 watts.

* * * * *

(3) For systems using digital modulation in the 902–928 MHz, 2400–2483.5 MHz, and 5725–5850 MHz bands: 1 Watt. As an alternative to a peak power measurement, compliance with the one Watt limit can be based on a measurement of the maximum conducted output power. Maximum Conducted Output Power is defined as the total transmit power delivered to all antennas and antenna elements averaged across all symbols in the signaling alphabet when the transmitter is operating at its maximum power control level. Power must be summed across all antennas and antenna elements. The average must not include any time intervals during which the transmitter is off or is transmitting at a reduced power level. If multiple modes of operation are possible (e.g., alternative modulation methods), the *maximum conducted output power* is the highest total transmit power occurring in any mode.

(4) The conducted output power limit specified in paragraph (b) of this section is based on the use of antennas with directional gains that do not exceed 6 dBi. Except as shown in paragraph (c) of this section, if transmitting antennas of directional gain greater than 6 dBi are used, the conducted output power from the intentional radiator shall be reduced below the stated values in paragraphs (b)(1), (b)(2), and (b)(3) of this section, as appropriate, by the amount in dB that the directional gain of the antenna exceeds 6 dBi.

(c) Operation with directional antenna gains greater than 6 dBi.

(1) Fixed point-to-point operation:

(i) Systems operating in the 2400–2483.5 MHz band that are used

exclusively for fixed, point-to-point operations may employ transmitting antennas with directional gain greater than 6 dBi provided the maximum conducted output power of the intentional radiator is reduced by 1 dB for every 3 dB that the directional gain of the antenna exceeds 6 dBi.

(ii) Systems operating in the 5725–5850 MHz band that are used exclusively for fixed, point-to-point operations may employ transmitting antennas with directional gain greater than 6 dBi without any corresponding reduction in transmitter conducted output power.

(iii) Fixed, point-to-point operation, as used in paragraphs (c)(1)(i) and (c)(1)(ii) of this section, excludes the use of point-to-multipoint systems, omnidirectional applications, and multiple co-located intentional radiators transmitting the same information. The operator of the spread spectrum or digitally modulated intentional radiator or, if the equipment is professionally installed, the installer is responsible for ensuring that the system is used exclusively for fixed, point-to-point operations. The instruction manual furnished with the intentional radiator shall contain language in the installation instructions informing the operator and the installer of this responsibility.

(2) In addition to the provisions in paragraphs (b)(1), (b)(3), (b)(4) and (c)(1)(i) of this section, transmitters operating in the 2400–2483.5 MHz band that emit multiple directional beams, simultaneously or sequentially, for the purpose of directing signals to individual receivers or to groups of receivers provided the emissions comply with the following:

(i) Different information must be transmitted to each receiver.

(ii) If the transmitter employs an antenna system that emits multiple directional beams but does not do emit multiple directional beams simultaneously, the total output power conducted to the array or arrays that comprise the device, i.e., the sum of the power supplied to all antennas, antenna elements, staves, etc. and summed across all carriers or frequency channels, shall not exceed the limit specified in paragraph (b)(1) or (b)(3) of this section, as applicable. However, the total conducted output power shall be reduced by 1 dB below the specified limits for each 3 dB that the directional gain of the antenna/antenna array exceeds 6 dBi. The directional antenna gain shall be computed as follows:

(A) The directional gain shall be calculated as the sum of 10 log (number of array elements or staves) plus the directional gain of the element or stave having the highest gain.

(B) A lower value for the directional gain than that calculated in paragraph (c)(2)(ii)(A) of this section will be accepted if sufficient evidence is presented, e.g., due to shading of the array or coherence loss in the beamforming.

(iii) If a transmitter employs an antenna that operates simultaneously on multiple directional beams using the same or different frequency channels, the power supplied to each emission beam is subject to the power limit specified in paragraph (c)(2)(ii) of this section. If transmitted beams overlap, the power shall be reduced to ensure that their aggregate power does not exceed the limit specified in paragraph (c)(2)(ii) of this section. In addition, the aggregate power transmitted simultaneously on all beams shall not exceed the limit specified in paragraph (c)(2)(ii) of this section by more than 8 dB.

(iv) Transmitters that emit a single directional beam shall operate under the provisions of paragraph (c)(1) of this section.

(d) In any 100 kHz bandwidth outside the frequency band in which the spread spectrum or digitally modulated intentional radiator is operating, the radio frequency power that is produced by the intentional radiator shall be at least 20 dB below that in the 100 kHz bandwidth within the band that contains the highest level of the desired power, based on either an RF conducted or a radiated measurement, provided the transmitter demonstrates compliance with the peak conducted power limits. If the transmitter complies with the conducted power limits based on the use of RMS averaging over a time interval, as permitted under paragraph (b)(3) of this section, the attenuation required under this paragraph shall be 30 dB instead of 20 dB. Attenuation below the general limits specified in § 15.209(a) is not required. In addition, radiated emissions which fall in the restricted bands, as defined in § 15.205(a), must also comply with the radiated emission limits specified in § 15.209(a) (see § 15.205(c)).

(e) For digitally modulated systems, the power spectral density conducted from the intentional radiator to the antenna shall not be greater than 8 dBm in any 3 kHz band during any time interval of continuous transmission. This power spectral density shall be determined in accordance with the provisions of paragraph (b) of this section. The same method of determining the conducted output power shall be used to determine the power spectral density.

(i) Systems operating under the provisions of this section shall be operated in a manner that ensures that the public is not exposed to radio frequency energy levels in excess of the Commission's guidelines. *See* § 1.1307(b)(1) of this chapter.

■ 14. Section 15.403 is amended by revising paragraph (n), removing paragraph (r), and redesignating paragraphs (s) and (t) as paragraphs (r) and (s) to read as follows:

§ 15.403 Definitions.

* * * * *

(n) *Maximum Conducted Output Power.* The total transmit power delivered to all antennas and antenna elements averaged across all symbols in the signaling alphabet when the transmitter is operating at its maximum power control level. Power must be summed across all antennas and antenna elements. The average must not include any time intervals during which the transmitter is off or is transmitting at a reduced power level. If multiple modes of operation are possible (*e.g.*, alternative modulation methods), the *maximum conducted output power* is the highest total transmit power occurring in any mode.

* * * * *

■ 15. Section 15.407 is amended by revising paragraphs (a)(1) through (a)(6) and by removing and reserving paragraph (d) to read as follows:

§ 15.407 General technical requirements.

(a) * * *

(1) For the band 5.15–5.25 GHz, the maximum conducted output power over the frequency band of operation shall not exceed the lesser of 50 mW or 4 dBm + 10 log B, where B is the 26–dB emission bandwidth in MHz. In addition, the peak power spectral density shall not exceed 4 dBm in any 1–MHz band. If transmitting antennas of directional gain greater than 6 dBi are used, both the maximum conducted output power and the peak power spectral density shall be reduced by the amount in dB that the directional gain of the antenna exceeds 6 dBi.

(2) For the 5.25–5.35 GHz and 5.47–5.725 GHz bands, the maximum conducted output power over the frequency bands of operation shall not exceed the lesser of 250 mW or 11 dBm + 10 log B, where B is the 26 dB emission bandwidth in megahertz. In addition, the peak power spectral density shall not exceed 11 dBm in any 1 megahertz band. If transmitting antennas of directional gain greater than

6 dBi are used, both the maximum conducted output power and the peak power spectral density shall be reduced by the amount in dB that the directional gain of the antenna exceeds 6 dBi.

(3) For the band 5.725–5.825 GHz, the maximum conducted output power over the frequency band of operation shall not exceed the lesser of 1 W or 17 dBm + 10 log B, where B is the 26-dB emission bandwidth in MHz. In addition, the peak power spectral density shall not exceed 17 dBm in any 1–MHz band. If transmitting antennas of directional gain greater than 6 dBi are used, both the maximum conducted output power and the peak power spectral density shall be reduced by the amount in dB that the directional gain of the antenna exceeds 6 dBi. However, fixed point-to-point U–NII devices operating in this band may employ transmitting antennas with directional gain up to 23 dBi without any corresponding reduction in the transmitter peak output power or peak power spectral density. For fixed, point-to-point U–NII transmitters that employ a directional antenna gain greater than 23 dBi, a 1 dB reduction in peak transmitter power and peak power spectral density for each 1 dB of antenna gain in excess of 23 dBi would be required. Fixed, point-to-point operations exclude the use of point-to-multipoint systems; omnidirectional applications, and multiple collocated transmitters transmitting the same information. The operator of the U–NII device, or if the equipment is professionally installed, the installer, is responsible for ensuring that systems employing high gain directional antennas are used exclusively for fixed, point-to-point operations.

Note to paragraph (a)(3): The Commission strongly recommends that parties employing U–NII devices to provide critical communications services should determine if there are any nearby Government radar systems that could affect their operation.

(4) The maximum conducted output power must be measured over any interval of continuous transmission using instrumentation calibrated in terms of an rms-equivalent voltage. The measurement results shall be properly adjusted for any instrument limitations, such as detector response times, limited resolution bandwidth capability when compared to the emission bandwidth, sensitivity, etc., so as to obtain a true peak measurement conforming to the above definitions for the emission in question.

(5) The peak power spectral density is measured as a conducted emission by direct connection of a calibrated test instrument to the equipment under test. If the device cannot be connected directly, alternative techniques acceptable to the Commission may be used. Measurements are made over a bandwidth of 1 MHz or the 26 dB emission bandwidth of the device, whichever is less. A resolution bandwidth less than the measurement bandwidth can be used, provided that the measured power is integrated to show total power over the measurement bandwidth. If the resolution bandwidth is approximately equal to the measurement bandwidth, and much less than the emission bandwidth of the equipment under test, the measured results shall be corrected to account for any difference between the resolution bandwidth of the test instrument and its actual noise bandwidth.

(6) The ratio of the peak excursion of the modulation envelope (measured using a peak hold function) to the maximum conducted output power (measured as specified above) shall not exceed 13 dB across any 1 MHz bandwidth or the emission bandwidth whichever is less.

* * * * *

[FR Doc. 04–19745 Filed 9–3–04; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[CC Docket No. 94–102, IB Docket No. 99–67; FCC 04–201]

Scope of Enhanced 911 Requirements

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission sets forth recordkeeping and reporting requirements in connection with mobile satellite service (MSS) providers' implementation of 911 emergency call centers. As many citizens, elected representatives, and public safety personnel recognize, 911 service is critical to our Nation's ability to respond to a host of crises and this document enhances the Nation's ability to do so.

DATES: Effective February 14, 2005. The pre-implementation call center reports (a one-time filing) are due by October 12, 2004. The post-implementation call center reports are due annually, beginning on October 15, 2005.

ADDRESSES: All comments should be addressed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any Paperwork Reduction Act (PRA) comments on the information collection(s) contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Judith-B.Herman@fcc.gov*, and to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, NW., Washington, DC 20503 via the Internet to *Kristy_L._LaLonde@omb.eop.gov* or by fax to 202–395–5167.

FOR FURTHER INFORMATION CONTACT: Arthur Lechtman, Satellite Division, International Bureau, at (202) 418–1465. For additional information concerning the information collection(s) contained in this document, contact Judith B. Herman at 202–418–0214, or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the *Second Report and Order* (R&O), adopted on August 18, 2004, and released on August 25, 2004. The full text of the *Second Report and Order* is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *FCC@BCPIWEB.com*. This R&O contains a modified information collection subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment on the modified information collection contained in this proceeding.

Paperwork Reduction Act of 1995 Analysis

Initial Paperwork Reduction Act of 1995 Analysis

This R&O contains a modified information collection. Specifically, the Commission previously obtained Office of Management and Budget (OMB) approval for submission of the post-implementation call center report in paper format (See OMB Control Number 3060–1059). The *Second Report and Order* requires mandatory electronic filing of these reports. The Commission, as part of its continuing effort to reduce

paperwork burdens, invites the general public and the OMB to comment on the information collection(s) contained in this R&O, as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. Public and agency comments are due November 8, 2004. PRA comments should address: (a) Whether the modified collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

OMB Control Number: 3060–1059.

Title: Revision of the Commission's rules to Ensure Compatibility With Enhanced 911 Emergency Calling Systems; Amendment of parts 2 and 25 to Implement the Global Mobile Personal Communications by Satellite (GMPCS) Memorandum of Understanding.

Form No.: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: 25 respondents.

Estimated Number of Responses: 75 responses.

Estimated Time Per Response: 1–2 hours.

Frequency of Response: On occasion, annual and other reporting requirements, recordkeeping requirement.

Estimated Total Annual Burden: 75 hours.

Estimated Total Annual Costs: $8,000.

Privacy Act Impact Assessment: Not applicable.

Needs and Uses: The Commission released a Second Report and Order titled, "Revision of the Commission's rules to Ensure Compatibility With Enhanced 911 Emergency Calling Systems; Amendment of parts 2 and 25 to Implement the Global Mobile Personal Communications by Satellite (GMPCS) Memorandum of Understanding and Arrangements; Petition of the National Telecommunications and Information Administration (NTIA) to Amend part 25 of the Commission's rules to Establish Emissions Limits for Mobile and Portable Earth Stations Operating in the 1610–1660.5 MHz Band," CC Docket No. 94–102; IB Docket No. 99–67, FCC 04–201. (E911 Scope Second R&O).

In the E911 Scope Second R&O, the Commission concluded that pursuant to § 25.143, Mobile Satellite Service (MSS) carriers must file annual reports with the Commission electronically beginning October 15, 2005. The reports will include carrier and call center contact information, the aggregate number of calls received by the call center each month during the relevant reporting period, and the number of those calls that required forwarding to a PSAP. The MSS carriers' filing of post-implementation reports with the Commission annually will help the Commission to monitor compliance with the call center requirement and determine whether modification to the requirement is warranted. The reports will also be a means of updating the public record on call center contact information. The Commission is revising OMB Control Number 3060–1059 to implement mandatory electronic filing for the post-implementation reports beginning October 15, 2005. The number of respondents, annual burden hours, etc. include the pre-implementation report that MSS carriers will file with the Commission one-time only on October 12, 2004. A Correction Worksheet (OMB 83–c) will be submitted to the Office of Management and Budget (OMB) to remove the paperwork burden associated with the pre-implementation report after October 12, 2004.

The information collections that result from the E911 Scope Second R&O are used by the Commission under its authority to license commercial satellite services in the United States. Without the collection of information that would result from these proposed rules, the Commission would not be able to monitor the MSS carriers' establishment of call centers which are essential to provide emergency services, such as handling emergency 911 telephone calls from American citizens. The recordkeeping and reporting requirements include data on MSS call center use such as the aggregate number of calls that the call centers receive and the number of calls that required forwarding to a local PSAP. The Commission will use this data to monitor compliance with the call center requirement and track usage trends. Such information would be useful to the Commission in considering whether FCC rules require modification to accommodate the changing market.

I. Overview

1. In this Second Report and Order, we adopt recordkeeping and reporting requirements in connection with implementation of the mobile satellite service (MSS) 911 emergency call center rule. The Commission adopted the call center rule in 2003, Revision of the Commission's rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94–102, IB Docket No. 99–67, *Report and Order and Second Further Notice of Proposed Rulemaking*, 18 FCC Rcd 25340, 2003, and stated that it would become effective 12 months after **Federal Register** publication, which occurred on February 11, 2004. *See Report and Order and Second Further Notice of Proposed Rulemaking*, 69 FR 6578, February 11, 2004. The new reporting requirements that we adopt today will ensure that MSS carriers deploy their emergency call centers by February 11, 2005, in a timely manner and that all stakeholders (including the Commission, service providers, public safety organizations, and customers) are informed during the implementation and operation of these centers. Reliable communications systems for public safety and Homeland Security are core goals of the Commission in serving the public interest. This decision represents a balanced approach, which takes into consideration the expectations of consumers and the need to strengthen Americans' ability to access public safety entities in times of crisis, including for Homeland Security purposes.

A. Pre-Implementation Status Reports

2. *Discussion.* We will require MSS carriers to file pre-implementation status reports concerning their respective plans to deploy emergency call centers. We conclude that this requirement will encourage carrier planning efforts (particularly those carriers that do not already provide emergency call centers) and discussions with other necessary participants in the public safety community. Advance notification will inform stakeholders how MSS carriers intend to connect with PSAPs. Contrary to Globalstar's assertions, we believe that a certification of compliance would arrive too late to stimulate advance discussions with the public safety community. These discussions may be instrumental in ensuring that MSS carriers have the necessary resources to handle effectively emergency call traffic. Rather than have the pre-implementation report due three months prior to the effective date (as proposed), we require

MSS carriers to submit these reports by October 12, 2004, four months prior to the call center rule's effective date. We believe that an October deadline will (a) give carriers sufficient time to prepare their reports and (b) allow for any public safety coordination that may be necessary prior to February 11, 2005.

3. The pre-implementation reports should include the following information: (a) Carrier identification information, including the person or persons filing the report and contact information; (b) a description of the carrier's coverage area; (c) basic call center information, including location and plans for routing emergency calls to PSAPs; (d) a description of how the call center features will be communicated to customers; and (e) an indication of any problems that the carrier has experienced in organizing its call center. We anticipate that the reports will be brief due to the limited nature of the information we are seeking, and therefore the reporting requirement should not impose substantial new burdens on carriers. In order to minimize any burden, we permit the electronic filing of the reports, which will be available on the Commission's Web site for ease of accessibility. Those carriers choosing to submit paper reports should submit an original and one copy to the Secretary's office to the attention of the Chief of the International Bureau at 445 12th Street, SW., Washington, DC 20554. We will also direct the Chief, International Bureau, to issue a public notice addressing the administrative details of the electronic submissions. Carriers may make changes in their plans after the report is filed, but to the extent that any substantial changes occur, carriers must file updates to their reports within 30 days of the adoption of any such change. We believe that the pre-implementation reports will provide valuable information for coordinating carrier plans with PSAPs and will assist our efforts to monitor implementation of the call center rule in a timely manner. If a carrier anticipates that it will not be able to meet the February 11, 2005, deadline for call center deployment, it should file a request for extension of time as early as possible in advance of the February 2005 deadline.

B. Post-Implementation Status Reports

4. *Discussion.* We believe that collection of call center data will benefit the public interest. We will require that MSS carriers keep track of all calls received at their emergency call centers. (The Commission does not require a similar call tracking requirement for other wireless carriers. The number of 911 calls currently received by MSS carriers is significantly lower than that received by terrestrial wireless carriers. In addition, the different nature of the 911 requirements and technological nature of the different services provides for a different approach in reporting requirements. Cellular and PCS providers are required to use technological solutions to automatically route 911 calls to the proper emergency personnel. Under the call center rule, MSS carriers must rely on staff at a call center to route the 911 call.) The reporting requirement on the number of calls received will assist us in monitoring a number of issues, including whether MSS carriers are complying with the call center rule, whether call centers are capable of handling 911 call traffic, and whether network enhancements would be necessary to improve the transfer of emergency calls from the call center to PSAPs. In addition, any MSS carriers that begin operation after February 11, 2005 would not be subject to a pre-implementation report; rather, they would need to comply with the call center requirement when operations begin (to the extent that two-way interconnected voice service is provided, consistent with our MSS call center policies). The post-implementation call center data reports would provide the only records on file at the Commission concerning those carriers' emergency call centers. MSS carriers must also identify which calls required forwarding to a PSAP and which did not. As we stated in the *E911 Scope Second Further Notice,* we believe that this data will be useful in assisting the Commission in monitoring compliance with the call center requirement as well as determining whether modification to the requirement is warranted. As suggested by NENA/NASNA, we will not require carriers to supply customer-specific information with these reports. Instead, carriers may submit the information in aggregate form. These reports must be filed once per year by each MSS carrier subject to the call center rule. In order to reduce the burden on carriers, the call center report will be due on the same day that MSS licensees must file their annual reports pursuant to § 25.143. *See* 47 CFR 25.143(e). Operators of 1.6/2.4 GHz MSS and 2 GHz MSS systems must file reports on October 15 of each year concerning various aspects of their satellite system. Operators of MSS in other bands (*e.g.,* L-band) are subject to the annual reporting requirements contained in § 25.210(l), which designates June 30 of each year as the reporting deadline. *See* 47 CFR 25.210(l). Therefore, the first call center reports will be due on October 15, 2005. Those MSS carriers that have a June 30 annual reporting requirement may submit their first post-implementation call center status reports on June 30, 2006.

5. We do not believe that this reporting requirement will impose substantial burdens on carriers, contrary to Globalstar's position. The information that we are collecting is minimal. Consistent with the Commission's recent requirement that all part 25 related filings be filed electronically, Amendment of the Commission's Space Station Licensing Rules and Policies, 2000 Biennial Regulatory Review—Streamlining and Other Revisions of part 25 of the Commission's rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations, IB Docket Nos. 02–34 and 00–248, *Fourth Report and Order,* 69 FR 47790, August 6, 2004, we require the post-implementation report to be filed electronically. We will also make these reports available on our Web site, and direct the Chief, International Bureau, to issue a public notice addressing the administrative details of the electronic submissions. We received no comments on our proposal to establish a sunset provision for a post-implementation reporting requirement. We anticipate that this requirement will sunset of its own accord after we transition MSS from 911 call centers to an automated E911 system following the conclusion of NRIC VII. Until that time, the data that carriers collect will provide valuable information that will assist in monitoring usage trends and also will help public safety organizations assess call center effectiveness. Usage trends may be an indicator of the need to modify the call center rule to be more responsive to call traffic or the need to hasten the transition to automatic delivery of MSS 911 calls to PSAPs.

C. Other Issues

6. *Discussion.* When we adopted the MSS call center requirement, we stated that call center operators must obtain the caller's phone number and location. We clarify now that call centers may share this information with the PSAP that receives the forwarded call. We must ensure that PSAPs can reconnect interrupted emergency calls as quickly as possible. We agree with NENA/NANSA's assertion that section 222(d) of the Communications Act permits MSS call centers to disclose to a PSAP any customer-specific information necessary to "reconnect with the caller

and proceed with the emergency response." (NENA/NASNA comments at 4). Moreover, MSS call centers are permitted under section 222(g) to provide PSAPs with subscriber listed and unlisted information (including caller name and number) in order to assist in the delivery of emergency services. Consequently, there is no need for us to determine here whether a call center meets the definition of a PSAP.

II. Final Regulatory Flexibility Analysis

7. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Revision of the Commission's rules to Ensure Compatibility With Enhanced 911 Emergency Calling Systems Second Further Notice of Proposed Rulemaking (2nd FNPRM). The Commission sought written public comment on the proposals in the 2nd FNPRM, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) for the *Second Report and Order* conforms to the RFA.

A. Need for, and Objectives of, the Proposed Rules

8. The *Second Report and Order* issues new reporting and recordkeeping rules in connection with the implementation of the mobile satellite service (MSS) emergency call center rule, 47 CFR 25.284, that was initiated with the *Second Further Notice of Proposed Rulemaking*, CC Docket No. 94–102 and IB Docket No. 99–67. The *Second Report and Order* requires MSS carriers subject to the call center rule to file a report with the Commission that indicates the carrier's plans for establishing its emergency call center. This report will ensure that MSS carriers deploy their emergency call centers by February 11, 2005, in a timely manner and that all stakeholders (including the Commission, service providers, public safety organizations, and customers) are informed during the implementation and operation of these centers. The *Second Report and Order* also requires MSS carriers subject to the call center rule to file annual reports regarding contact information and call traffic data, including the aggregate number of calls received on a monthly basis and the number of those calls that required transferring to a public safety answering point (PSAP). The Commission takes this action in recognition of Congress' directive to "facilitate the prompt deployment throughout the United States of a seamless, ubiquitous, and reliable end-to-end infrastructure for communications, including wireless communications, to meet the Nation's public safety and other communications needs." In addition, the Commission takes this action to ensure consumers' expectations regarding access to 911 service are met, to strengthen Americans' ability to access public safety. It has balanced those goals against the needs of entities offering these services to be able to compete in a competitive marketplace.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

9. We received no comments directly in response to the IRFA in this proceeding.

C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

10. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the adopted rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under section 3 of the Small Business Act (5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definitions(s) in the **Federal Register**." Under the Small Business Act, a "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."

11. Incumbent Local Exchange Carriers. Neither the Commission nor the SBA has developed a specific small business size standard for providers of incumbent local exchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 1,337 incumbent local exchange carriers reported that they were engaged in the provision of local exchange services. Of these 1,337 carriers, an estimated 1,032 have 1,500 or fewer employees and 305 have more than 1,500 employees. Consequently, we estimate that the majority of providers of local exchange service are small entities that may be affected by the rules and policies adopted herein.

12. Competitive Local Exchange Carriers. Neither the Commission nor the SBA has developed a specific small business size standard for providers of competitive local exchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 609 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 609 companies, an estimated 458 have 1,500 or fewer employees and 151 have more than 1,500 employees. Consequently, the Commission estimates that the majority of providers of competitive local exchange service are small entities that may be affected by the rules.

13. Competitive Access Providers. Neither the Commission nor the SBA has developed a specific size standard for competitive access providers (CAPS). The closest applicable standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 609 CAPs or competitive local exchange carriers and 35 other local exchange carriers reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 609 competitive access providers and competitive local exchange carriers, an estimated 458 have 1,500 or fewer employees and 151 have more than 1,500 employees. Of the 35 other local exchange carriers, an estimated 34 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of small entity CAPS and the majority of other local exchange carriers may be affected by the rules.

14. Local Resellers. The SBA has developed a specific size standard for small businesses within the category of

Telecommunications Resellers. Under that standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 133 companies reported that they were engaged in the provision of local resale services. Of these 133 companies, an estimated 127 have 1,500 or fewer employees and 6 have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers may be affected by the rules.

15. Toll Resellers. The SBA has developed a specific size standard for small businesses within the category of Telecommunications Resellers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 625 companies reported that they were engaged in the provision of toll resale services. Of these 625 companies, an estimated 590 have 1,500 or fewer employees and 35 have more than 1,500 employees. Consequently, the Commission estimates that a majority of toll resellers may be affected by the rules.

16. Interexchange Carriers. Neither the Commission nor the SBA has developed a specific size standard for small entities specifically applicable to providers of interexchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 261 carriers reported that their primary telecommunications service activity was the provision of interexchange services. Of these 261 carriers, an estimated 223 have 1,500 or fewer employees and 38 have more than 1,500 employees. Consequently, we estimate that a majority of interexchange carriers may be affected by the rules.

17. Operator Service Providers. Neither the Commission nor the SBA has developed a specific size standard for small entities specifically applicable to operator service providers. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 23 companies reported that they were engaged in the provision of operator services. Of these 23 companies, an estimated 22 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that a majority of local resellers may be affected by the rules.

18. Prepaid Calling Card Providers. The SBA has developed a size standard for small businesses within the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 37 companies reported that they were engaged in the provision of prepaid calling cards. Of these 37 companies, an estimated 36 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that a majority of prepaid calling providers may be affected by the rules.

19. Mobile Satellite Service Carriers. Neither the Commission nor the U.S. Small Business Administration has developed a small business size standard specifically for mobile satellite service licensees. The appropriate size standard is therefore the SBA standard for Satellite Telecommunications, which provides that such entities are small if they have $12.5 million or less in annual revenues. Currently, nearly a dozen entities are authorized to provide voice MSS in the United States. We have ascertained from published data that four of those companies are not small entities according to the SBA's definition, but we do not have sufficient information to determine which, if any, of the others are small entities. We anticipate issuing several licenses for 2 GHz mobile earth stations that would be subject to the requirements we are adopting here. We do not know how many of those licenses will be held by small entities, however, as we do not yet know exactly how many 2 GHz mobile-earth-station licenses will be issued or who will receive them. The Commission notes that small businesses are not likely to have the financial ability to become MSS system operators because of high implementation costs, including construction of satellite space stations and rocket launch, associated with satellite systems and services.

20. Other Toll Carriers. Neither the Commission nor the SBA has developed a specific size standard for small entities specifically applicable to "Other Toll Carriers." This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 92 carriers reported that they were engaged in the provision of "Other Toll Services." Of these 92 carriers, an estimated 82 have 1,500 or fewer employees and ten have more than 1,500 employees. Consequently, the Commission estimates that a majority of "Other Toll Carriers" may be affected by the rules.

21. Wireless Service Providers. The SBA has developed a size standard for small wireless businesses within the two separate categories of Cellular and Other Wireless Telecommunications and Paging. Under these standards, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 1,387 companies reported that they were engaged in the provision of wireless service. Of these 1,387 companies, an estimated 945 have 1,500 or fewer employees and 442 have more than 1,500 employees. Consequently, we estimate that a majority of wireless service providers may be affected by the rules.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

22. Paragraphs 10–14 of the *Second Report and Order* require that all MSS licensees subject to the emergency call center requirement both (a) submit implementation progress reports prior to the effective date of the call center requirement and (b) record data on call center operations for annual reporting purposes. *See also* Section E, *infra*.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

23. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

24. The critical nature of the 911 and E911 proceedings limit the Commission's ability to provide small carriers with a less burdensome set of E911 regulations than that placed on large entities. A delayed or less than adequate response to an E911 call can

be disastrous regardless of whether a small carrier or a large carrier is involved. Prior to adoption of the call center rule, 47 CFR 25.284, MSS carriers had been exempt from the Commission's 911 and E911 regulations.

25. As mentioned, the *Second Report and Order* sets forth reporting and recordkeeping requirements in connection with implementation of the MSS emergency call center requirement. The first reporting requirement is a one-time filing that MSS carriers (those subject to the call center rule) must submit, electronically, prior to the effective date of the call center rule. This report would provide the Commission, the public, and the public safety community with valuable information concerning the carrier's plans to establish an emergency call center. Call center 911 service is a new form of 911 service, and the *Second Report and Order* also requires collection of call center data, including the number of calls received during a given period and the number of calls requiring forwarding to a public safety answering point (PSAP). To minimize burdens on MSS carriers, including small entities, the *Second Report and Order* requires that the annual call center data reports be filed electronically and that the deadline for submission be consistent with the deadline for satellite operators' annual satellite reports.

26. By tailoring its rules in this manner, the Commission seeks to fulfill its obligation of ensuring "a seamless, ubiquitous, and reliable end-to-end infrastructure for communications, including wireless communications, to meet the Nation's public safety and other communications needs."

F. Report to Congress

27. The Commission will send a copy of the *Second Report and Order,* including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Second Report and Order,* including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Second Report and Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

III. Ordering Clauses

28. *It is ordered,* that pursuant to sections 1, 4(i), 7, 10, 201, 202, 208, 214, 222(d)(4)(A)–(C), 222(f), 222(g), 222(h)(1)(A), 222(h)(4)–(5), 251(e)(3), 301, 303, 308, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 157, 160, 201, 202, 208, 214, 222(d)(4)(A)–(C), 222(f), 222(g), 222(h)(1)(A), 222(h)(4)–(5), 251(e)(3), 301, 303, 308, 310, this *Second Report and Order* is hereby *adopted.*

29. *It is further ordered* that the rule changes set forth will become effective on February 14, 2005.

30. *It is further ordered* that, pursuant to 47 U.S.C. 155(c) and 47 CFR 0.261, the Chief of the International Bureau is delegated authority to prescribe and set forth procedures for the implementation of the provisions adopted herein.

31. *It is further ordered* that the Commission's Office of Consumer and Government Affairs, Reference Information Center, *shall send* a copy of this *Second Report and Order,* including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 25

Satellites.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 25 as follows:

PART 25—SATELLITE COMMUNICATIONS

■ 1. The authority citation for part 25 continues to read as follows:

Authority: 47 U.S.C. 701–744. Interprets or applies Sections 4, 301, 302, 303, 307, 309, and 332 of the Communications Act, as amended, 47 U.S.C. Sections 154, 301, 302, 303, 307, 309, 332, unless otherwise noted.

■ 2. Redesignate the text of § 25.284 as § 25.284(a), and add new paragraph (b), to read as follows:

§ 25.284 Emergency Call Center Service.

(a) * * *

(b) Beginning February 11, 2005, each mobile satellite service carrier that is subject to the provisions of paragraph (a) of this section must maintain records of all 911 calls received at its emergency call center. Beginning October 15, 2005, and on each following October 15, mobile satellite service carriers providing service in the 1.6/2.4 GHz and 2 GHz bands must submit a report to the Commission regarding their call center data, current as of September 30 of that year. Beginning June 30, 2006, and on each following June 30, mobile satellite service carriers providing service in bands other than 1.6/2.4 GHz and 2 GHz must submit a report to the Commission regarding their call center data, current as of May 31 of that year. These reports must include, at a minimum, the following:

(1) The name and address of the carrier, the address of the carrier's emergency call center, and emergency call center contact information;

(2) The aggregate number of calls received by the call center each month during the relevant reporting period;

(3) An indication of how many calls received by the call center each month during the relevant reporting period required forwarding to a public safety answering point and how many did not require forwarding to a public safety answering point.

[FR Doc. 04–20162 Filed 9–3–04; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 106, 107, 171, 172, 173, 178, 179 and 180

[Docket No. RSPA–04–16099 (HM–189W)]

RIN 2137–AD99

Hazardous Materials Regulations: Minor Editorial Corrections and Clarifications

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule corrects editorial errors, makes minor regulatory changes and, in response to requests for clarification, improves the clarity of certain provisions in the Hazardous Materials Regulations (HMR). The intended effect of this rule is to enhance the accuracy and reduce misunderstandings of the regulations. The amendments contained in this rule are minor changes and do not impose new requirements.

DATES: *Effective date:* October 1, 2004.

FOR FURTHER INFORMATION CONTACT: Darral Relerford, Office of Hazardous Materials Standards, (202) 366–8553, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

The Research and Special Programs Administration (RSPA, we) annually

reviews the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) to identify errors that may confuse readers. Inaccuracies corrected in this final rule include typographical and printing errors, incorrect references to regulations in the CFR, inconsistent use of terminology, and misstatements of certain regulatory requirements. In addition, we are making certain other changes to improve the clarity of certain HMR requirements.

Because these amendments do not impose new requirements, notice and public procedure are unnecessary. In addition, making these amendments effective without the customary 30-day delay following publication will allow the changes to appear in the next revision of 49 CFR.

The following is a section-by-section summary of the amendments made under this final rule. It does not discuss all minor editorial corrections (for example, punctuation errors) and certain other minor adjustments to enhance the clarity of the HMR.

II. Section-by-Section Review

Part 106

Section 106.70. In paragraph (b), in the first sentence, the wording "on you which are commenting" is revised to read "on which you are commenting."

Part 107

Section 107.219. In paragraph (c), we are removing an obsolete reference to § 107.201(c).

Appendix A to Subpart D of Part 107: In Appendix A to subpart D of part 107, in the List of Frequently Cited Violations in Part II, under the heading "General Requirements" under "B. Training requirements:" entry 2. b., we are updating the Baseline assessment from "$250" to read "$275". Also under the heading "Offeror Requirements—All hazardous materials," under "D. Package Marking Requirements," we are correcting the section reference "§ 172.303(a)(4)" to read "§ 172.304(a)(4)" in entry 8.

Part 171

Section 171.6. In paragraph (b)(2), the table of OMB control numbers is revised to reflect current affected sections for OMB Control Number 2137–0557.

Part 172

Section 172.101 Hazardous Materials Table (HMT). We are amending the HMT to correct certain entries, as follows:

—For the entry "Detonators, non-electric, *for blasting,*" UN0455, in column (10A), the vessel stowage location code "5" is corrected to read "05."

—For the entry "*Etching acid, liquid, n.o.s., see* Hydrofluoric acid, solution *etc.,*" in Column (2), the word "*solution*" is corrected from Roman type to italics.

—For the entry "Gasoline," 3, UN1203, in column (7), Special Provision "B101" is corrected to read "B1."

—For the entry "*Methyl mercaptopropionaldehyde, see* Thia-4-pentanal," in Column (2), the word "Thia-4-pentanal" is corrected to read "4-Thiapentanal."

—For the entry "Perfumery Products, *with flammable solvents,*" UN1266, Packing Group II, in column (9A), the quantity limitation for passenger aircraft/rail is corrected to read "15 L." This error appears in Docket No. RSPA–2004–18575 (HM–189X) effective October 1, 2004 (July 13, 2004; 69 FR 41967).

—For the entry "Self-reactive liquid type F, UN3229," Column (1) is revised by reinstating the letter "G," which was inadvertently omitted in a recent rulemaking published on June 22, 2004, under Docket No. RSPA 2003–13658 (HM–215E), "Response to Appeals and Corrections," (69 FR 34604).

—For the entry "Wood preservatives, UN1306," the proper shipping name is corrected to read, "Wood preservatives, liquid." This error appears in Docket No. RSPA–2004–18575 (HM–189X).

Section 172.102. In paragraph (c)(7)(vi)(D)(3), we are correcting the spelling of the word "not."

Section 172.202. In paragraph (a)(2), we are correcting the reference to the section number for the Hazardous Materials Table. In paragraph (a)(2)(ii), we are correcting a proper shipping name by adding "n.o.s." to "Combustible liquid."

Section 172.512. In paragraphs (a)(3) and (b)(3), we are correcting section references.

Part 173

Section 173.32. In paragraph (c)(3), in the second sentence, we are correcting the reference "§ 178.275(f)(4)" to read "§ 178.275(f)(1)."

Section 173.61. In paragraph (c), we are correcting the ID number "NA 0350" to read "UN 0350."

Section 173.133. Paragraphs (b)(1)(i) and (iii), in the formula, we are correcting "$LC50_i$" to read "LC_{50i}" and "L_{C50i}" to read "LC_{50i}."

Section 173.185. Paragraphs (g)(2) and (j) are corrected to provide the correct section reference.

Section 173.225. In the Organic Peroxide Table, for the entry "tert-Butyl peroxyneodecanoate [as a stable dispersion in water]," UN3117, ≤52, under column (6), "Packing method" we are removing ", IBC" which is an error. Section 173.225(b)(6) states that the designation "IBC" means that Special Provision IB52 in the Hazardous Material Table in § 172.102 applies. Special Provision IB52 does not list "UN3117" as an authorized hazardous material for transport in an IBC. An IBC, however, may be authorized for this hazardous material when approved by the Associate Administrator as stated in § 172.102(c)(4).

Section 173.315. In paragraph (j)(3), in the last sentence, we are correcting the reference "§ 177.834(g)" to read "§ 177.834(a)."

Section 173.316. In paragraph (b), we are making a minor editorial revision and correcting the reference "§ 173.34(d)" to read "§ 173.301(f)."

Part 178

Section 178.68. In paragraph (i)(2), in the first sentence, we are correcting the reference "(i)(1)(i)" to read "(i)(1)."

Section 178.276. In paragraph (f), we are correcting the section reference "§ 178.275(h)" to read "§ 178.275(i)."

Section 178.358–5. In paragraph (c), we are correcting the parenthetical phase "(incorporated by reference; *see* § 171.1 of this subchapter)" to read "(IBR, see § 171.7 of this subchapter)."

Section 178.609. We are revising the wording in paragraphs (d)(1) and (2) to clarify test requirements for infectious substances packagings.

Section 178.707. In paragraph (c)(3)(iv), in the first sentence, we are correcting the wording "INCs" to read "IBCs."

Part 179

Section 179.200–16. In paragraph (e), in the last sentence, we are correcting the section reference "§ 179.201–1(a)" to read "§ 179.201–1."

Section 179.220–17. In paragraph (e), in the last sentence, we are correcting the section reference "§ 179.221–1(a)" to read "§ 179.221–1."

Section 179.300–1. We are revising the section heading to remove an obsolete reference to § 179.302.

Part 180

Section 180.403. In the definition for "Replacement of a barrel," we are correcting the section reference "§ 178.337–1" to read "§ 178.320."

Section 180.417. Paragraph (b)(1)(v) is duplicative of the requirement in paragraph (b)(2)(v). Therefore, we are removing paragraph (b)(1)(v) and

redesignating paragraph (b)(2)(v) as paragraph (b)(1)(v). Paragraph (b)(2)(v) is being reserved.

III. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). Because there is no economic impact of this rule, preparation of a regulatory impact analysis is not warranted.

B. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria in Executive Order 13132 ("Federalism"). This final rule does not adopt any regulation that: (1) Has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government; (2) imposes substantial direct compliance costs on State and local governments; or (3) preempts state law.

RSPA is not aware of any State, local, or Indian tribe requirements that would be preempted by correcting editorial errors and making minor regulatory changes. This final rule does not have sufficient federalism impacts to warrant the preparation of a federalism assessment.

C. Executive Order 13175

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this rule does not have tribal implications and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

D. Regulatory Flexibility Act

I certify that this final rule will not have a significant economic impact on a substantial number of small entities. This rule makes minor regulatory changes which will not impose any new requirements on persons subject to the HMR; thus, there are no direct or indirect adverse economic impacts for small units of government, businesses or other organizations.

E. Unfunded Mandates Reform Act of 1995

This rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $120.7 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

F. Paperwork Reduction Act

There are no new information collection requirements in this final rule.

G. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 106

Administrative practice and procedure, Hazardous materials transportation.

49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Reporting and recordkeeping requirements.

49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 178

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 179

Hazardous materials transportation, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, 49 CFR chapter I is amended as follows:

PART 106—RULEMAKING PROCEDURES

■ 1. The authority citation for part 106 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

■ 2. In § 106.70, paragraph (b) is revised to read as follows:

§ 106.70 Where and when to file comments.

* * * * *

(b) Make sure that your comments reach us by the deadline set out in the rulemaking document on which you are commenting. We will consider late filed comments to the extent possible.

* * * * *

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

■ 3. The authority citation for part 107 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub. L. 104–121 sections 212–213; Pub. L. 104–134 section 31001; 49 CFR 1.45, 1.53.

■ 4. In § 107.219, paragraph (c) introductory text is revised to read as follows:

§ 107.219 Processing.

* * * * *

(c) The Associate Administrator will only consider an application for waiver of preemption determination if—

* * * * *

■ 5. In Appendix A to subpart D of part 107, in the List of Frequently Cited Violations (part II), under the heading "General Requirements" under "B. Training requirements:" entry 2.b. and under the heading "Offeror Requirements—All hazardous materials" under "D. Package Marking Requirements:", entry 8, are revised to read as follows:

II.—LIST OF FREQUENTLY CITED VIOLATIONS

Violation description	Section or cite	Baseline assessment
General Requirements		
* * * * * * *		
B. Training requirements: * * *		
2. * * *		
b. 10 hazmat employees or fewer		$275 and up each area.
* * * * * * *		
Offeror Requirements—All hazardous materials		
D. Package Marking Requirements: * * *		
8. Failure to locate required markings away from other markings that could reduce their effectiveness.	172.304(a)(4)	$800.
* * * * * * *		

* * * * *

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

■ 6. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; 49 CFR 1.45 and 1.53; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub. L. 104–134 section 31001.

■ 7. In § 171.6, in the paragraph (b)(2) Table, the entry for "2137–0557" is revised to read as follows:

§ 171.6 Control numbers under the Paperwork Reduction Act.

* * * * *

(b) * * *

(2) Table.

* * * * *

Current OMB control No.	Title	Title 49 CFR part or section where identified and described
* * * * * * *		
2137–0557	Approvals for Hazardous Materials	§§ 107.402; 107.403; 107.405; 107.503; 107.705; 107.713; 107.715; 107.717; 107.803; 107.805; 107.807; 110.30; 172.101; 172.102, Special Provisions 26, 19, 53, 55, 60, 105, 118, 121, 125, 129, 131, 133, 136, 172.102, Special Provisions 26, 19, 53, 55, 60, 105, 118, 121, 125, 129, 131, 133, 136; Special Provisions B45, B55, B61, B69, B77, B81, N10, N72; 173a; 173.4; 173.7; 173.21; 173.22; 173.24; 173.38; 173.31; 173.51; 173.56; 173.58; 173.59; 173.124; 173.128; 173.159; 173.166; 173.171; 173.214; 173.222; 173.224; 173.225; 173.245; 173.301; 173.305; 173.306; 173.314; 173.315; 173.316; 173.318; 173.334; 173.340; 173.411; 173.433; 173.457; 173.471; 173.472; 173.476; 174.50; 174.63; 175.10; 175.701; 176.168; 176.340; 176.704; 178.3; 178.35; 178.47; 178.53; 178.270–3; 178.270–13; 178.273; 178.274; 178.503; 178.509; 178.605; 178.606; 178.608; 178.801; 178.813; 180.213.
* * * * * * *		

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

■ 8. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 172.101 [Amended].

■ 9. In § 172.101, in the Hazardous Materials Table, the following changes are made:

■ a. For the entry "Detonators, non-electric, *for blasting*", UN0455, in column (10A), "5" is removed and "05" is added in its place.

■ b. For the entry "*Etching acid, liquid, n.o.s., see* Hydrofluoric acid, solution *etc*", in Column (2), "solution" is removed and "*solution,*" is added in its place.

■ c. For the entry "Gasoline", 3, UN1203, in column (7), "B101" is removed and "B1" is added in its place.

■ d. For the entry "*Methyl mercaptopropionaldehyde, see* Thia-4-pentanal", in Column (2), the word "Thia-4-pentanal" is removed and "4-Thiapentanal" is added in its place.

■ e. For the entry "Perfumery products, *with flammable solvents*", UN1266, in column (9A), "5 L" is removed and "15 L" is added in its place.

■ f. For the entry "Self-reactive liquid type F", UN3229, in Column (1), the letter "G" is added.

■ g. For the entry "Wood preservatives", UN1306, in column (2), the word "Wood preservatives" is removed and "Wood preservatives, liquid" is added in its place.

■ 10. In § 172.102, paragraph (c)(7)(vi)(D)(*3*), is revised to read as follows:

§ 172.102 Special provisions.

* * * * *

(c) * * *

(7) * * *

(vi) * * *

(D) * * *

(3) When no bottom openings are authorized, the alternative portable tank must not have bottom openings.

* * * * *

■ 11. In § 172.202, the first sentence in paragraph (a)(2) introductory text and paragraph (a)(2)(ii) are revised to read as follows:

§ 172.202 Description of hazardous material on shipping papers.

(a) * * *

(2) The hazard class or division number prescribed for the material, as shown in Column (3) of the § 172.101 Table. * * *

* * * * *

(ii) The hazard class need not be included for the entry "Combustible liquid, n.o.s.".

* * * * *

■ 12. In § 172.512 paragraph (a)(3) and (b)(3) are revised to read as follows:

§ 172.512 Freight containers and aircraft unit load devices.

(a) * * *

(3) Placarding is not required on a freight container or aircraft unit load device if it is only transported by air and is identified as containing a hazardous material in the manner provided in part 7, chapter 2, section 2.7, of the ICAO Technical Instructions (IBR, see § 171.7 of this subchapter).

* * * * *

(b) * * *

(3) Is identified as containing a hazardous material in the manner provided in part 7, chapter 2, section 2.7, of the ICAO Technical Instructions. When hazardous materials are offered for transportation, not involving air transportation, in a freight container having a capacity of less than 640 cubic feet the freight container need not be placarded. However, if not placarded, it must be labeled in accordance with subpart E of this part.

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

■ 13. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; 49 CFR 1.45, 1.53.

§ 173.32 [Amended].

■ 14. In § 173.32, in the second sentence in paragraph (c) (3), the wording "§§ 178.275(f)(4) and 178.277" is revised to read "§§ 178.275(f)(1) and 178.277".

§ 173.61 [Amended].

■ 15. In § 173.61, in paragraph (c), the ID number "NA 0350" is revised to read "UN 0350" and placed in alphanumeric order.

■ 16. In § 173.133, the formulas in paragraphs (b)(1)(ii) and (b)(1)(iii) are revised to read as follows:

§ 173.133 Assignment of packaging group and hazard zones for Division 6.1 materials.

* * * * *

(b) * * *

(1) * * *

(i) The LC_{50} of the mixture is estimated using the formula:

$$LC_{50}(\text{mixture}) = \frac{1}{\sum_{i=1}^{n} \frac{f_i}{LC_{50i}}}$$

* * *

(iii) The ratio of the volatility to the LC_{50} is calculated using the formula:

$$R = \sum_{i=1}^{n} \frac{V_i}{LC_{50i}}$$

* * * * *

§ 173.185 [Amended].

■ 17. In § 173.185, the following changes are made:

■ a. In paragraph (g)(2), the wording "(e)(5)" is revised to read "(e)(4)".

■ b. In paragraph (j), the wording "(e)(5)" is revised to read "(e)(4)".

§ 173.225 [Amended].

■ 18. In § 173.225, in the paragraph (b), in the Organic Peroxide Table, for the entry "tert-Butyl peroxyneodecanoate [as a stable dispersion in water], UN3117, ≤52", in column (6), "OP8, IBC" is revised to read "OP8".

■ 19. In § 173.315, paragraph (j)(3) is revised to read as follows:

§ 173.315 Compressed gases in cargo tanks and portable tanks.

* * * * *

(j) * * *

(3) The containers must be braced or otherwise secured on the vehicle to prevent relative motion while in transit. Valves or other fittings must be adequately protected against damage during transportation. (See § 177.834(a) of this subchapter.)

* * * * *

§ 173.316 [Amended].

■ 20. In § 173.316, paragraph (b), the wording "§ 173.34(d)" is revised to read "§ 173.301(f)".

PART 178—SPECIFICATIONS FOR PACKAGINGS

■ 21. The authority citation for part 178 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

■ 22. In § 178.68, paragraph (i)(2) is revised to read as follows:

§ 178.68 Specification 4E welded aluminum cylinders.

* * * * *

(i) * * *

(2) If the weld is at midlength of the cylinder, the test may be made as specified in paragraph (i)(1) of this section or must be made between wedge shaped knife edges (60° angle) rounded to a ½ inch radius. There must be no evidence of cracking in the sample when it is flattened to no more than 6 times the wall thickness.

* * * * *

§ 178.276 [Amended].

■ 23. In § 178.276, in paragraph (f), in the fourth sentence, the wording "§ 178.275(h)" is revised to read "§ 178.275(i)".

■ 24. In § 178.358–5, paragraph (c) is revised to read as follows:

§ 178.358–5 Required markings.

* * * * *

(c) For Specification 21PF–1A and –1B only, the markings required by this section must be affixed to each overpack by inscription upon a metal identification plate 11 inches wide x 15 inches long (28 cm x 38 cm), fabricated of 16 to 20 gauge stainless steel sheet, ASTM A–240/A 240M (IBR, *see* § 171.7 of this subchapter), Type 304L.

* * * * *

■ 25. In § 178.609, the introductory text to paragraphs (d)(1) and (d)(2) are revised to read as follows:

§ 178.609 Test requirements for packaging for infectious substances.

* * * * *

(d) * * *

(1) Where the samples are in the shape of a box, five samples must be dropped, one in each of the following orientation: * * *

(2) Where the samples are in the shape of a drum, three samples must be dropped, one in each of the following orientations: * * *

■ 26. In § 178.707, paragraph (c)(3)(iv) is revised to read as follows:

§ 178.707 Standards for composite IBCs.

* * * * *

(c) * * *

(3) * * *

(iv) Composite IBCs intended for the transportation of liquids must be capable of releasing a sufficient amount of vapor to prevent the body of the IBC from rupturing if it is subjected to an internal pressure in excess of that for which it was hydraulically tested. This may be achieved by spring-loaded or

non-reclosing pressure relief devices or by other means of construction.

* * * * *

PART 179—SPECIFICATIONS FOR TANK CARS

■ 27. The authority citation for part 179 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 179.200–16 [Amended].

■ 28. In § 179.200–16, in paragraph (e), in the last sentence, the reference "§ 179–201–1(a)" is corrected to read "§ 179.201–1".

§ 179.220–17 [Amended].

■ 29. In § 179.220–17, in paragraph (e), in the last sentence, the reference "§ 179–221–1(a)" is corrected to read "§ 179.221–1".

■ 30. In § 179.300–1, the section heading is revised to read as follows:

§ 179.300–1 Tanks built under these specifications shall meet the requirements of §§ 179.300 and 179.301.

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

■ 31. The authority citation for part 180 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

■ 32. In § 180.403, the definition of "Replacement of a barrel" is revised to read as follows:

§ 180.403 Definitions.

* * * * *

Replacement of a barrel means to replace the existing tank on a motor vehicle chassis with an unused (new) *tank*. For the definition of *tank*, see § 178.320, § 178.345, or § 178.338–1 of this subchapter, as applicable.

* * * * *

■ 33. In § 180.417, paragraph (b)(1)(v) is revised, and paragraph (b)(2)(v) is removed and reserved, to read as follows:

§ 180.417 Reporting and record retention requirements.

* * * * *

(b) * * *

(1) * * *

(v) Minimum thickness of the cargo tank shell and heads when the cargo tank is thickness tested in accordance with § 180.407(d)(4), § 180.407(e)(3), § 180.407(f)(3), or § 180.407(i);

* * * * *

Issued in Washington, DC, on August 17, 2004, under authority delegated in 49 CFR part 1.

Samuel G. Bonasso,

Deputy Administrator.

[FR Doc. 04–19742 Filed 9–3–04; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 040429134–4135–01; I.D. 083004B]

Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Action #10 - Adjustments of the Recreational Fishery from the U.S.-Canada Border to Cape Falcon, Oregon

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of fishing seasons; request for comments.

SUMMARY: NMFS announces two regulatory modifications, and a reallocation of the coho quota, in the recreational fishery from the U.S.-Canada Border to Cape Falcon, OR. Effective Friday, August 13, 2004, regulations for the area from Cape Alava, WA to Cape Falcon, OR (La Push, Westport, and Columbia River Subareas) were modified to have a minimum size limit for chinook of 24 inches (61.0 cm) total length; and for the area from Cape Alava to Queets River, WA (La Push Subarea) the daily bag limit was modified to: "all salmon, two fish per day, and all retained coho must have a healed adipose fin clip," thus allowing for the retention of two chinook per day. In addition, 40,000 coho were reallocated from Queets River to Leadbetter Point, WA (Westport Subarea) quota, by transferring the coho on an impact neutral basis, to the coho quota in the subarea from the U.S.-Canada Border to Cape Alava, WA (Neah Bay Subarea), which increased the Neah Bay quota by 6,600 coho. These actions were necessary to conform to the 2004 management goals. The intended effect of these actions was to allow the fishery to operate within the seasons and quotas specified in the 2004 annual management measures.

DATES: Effective 0001 hours local time (l.t.), August 13, 2004, until the chinook quota or coho quota are taken, or 2359 hours l.t., September 30, 2004, which ever is earlier; after which the fishery will remain closed until opened through an additional inseason action for the west coast salmon fisheries, which will be published in the **Federal Register**, or until the effective date of the next scheduled open period announced in the 2005 annual management measures. Comments will be accepted through September 22, 2004.

ADDRESSES: Comments on these actions must be mailed to D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, NOAA, 7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115–0070; or faxed to 206–526–6376; or Rod McInnis, Regional Administrator, Southwest Region, NMFS, NOAA, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4132; or faxed to 562–980–4018. Comments can also be submitted via e-mail at the 2004salmonIA10.nwr@noaa.gov address, or through the internet at the Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments, and include [docket number and/or RIN number] in the subject line of the message. Information relevant to this document is available for public review during business hours at the Office of the Regional Administrator, Northwest Region, NMFS.

FOR FURTHER INFORMATION CONTACT: Christopher Wright, 206–526–6140.

SUPPLEMENTARY INFORMATION: The NMFS Regional Administrator (RA) has adjusted the recreational fishery from the U.S.-Canada Border to Cape Falcon, OR with two regulatory modifications, and also reallocated the coho quota among two subareas. Effective Friday, August 13, 2004, regulations in the area from Cape Alava, WA to Cape Falcon, OR, (La Push, Westport, and Columbia River Subareas) were modified to have a minimum size limit for chinook of 24 inches (61.0 cm) total length; and for the area from Cape Alava to Queets River, WA (La Push Subarea) the daily bag limit was modified to: "all salmon, two fish per day, and all retained coho must have a healed adipose fin clip," thus allowing for the retention of two chinook per day. In addition, 40,000 coho were reallocated from Queets River to Leadbetter Point, WA (Westport Subarea) quota, by transferring the coho on an impact neutral basis, to the coho quota in the subarea from the U.S.-Canada Border to Cape Alava, WA (Neah Bay Subarea), which increased the Neah Bay quota by 6,600 coho. On August 10, 2004, the Regional Administrator had determined the available catch and effort data indicated that the catch was less than anticipated

preseason and that provisions designed to slow the catch of chinook could be modified. In addition, the Neah Bay subarea was projected to reach its coho quota, and because there were additional coho in the Westport subarea quota, a reallocation of the North of Cape Falcon overall quota could be done while still meeting conservation objectives and without impacting Westport subarea fishers.

All other restrictions remain in effect as announced for 2004 ocean salmon fisheries and previous inseason actions. These actions were necessary to conform to the 2004 management goals. Modification of the species that may be caught and landed during specific seasons and the establishment or modification of limited retention regulations are authorized by regulations at 50 CFR 660.409(b)(1)(ii). Modification of recreational bag limits is authorized by regulations at 50 CFR 660.409(b)(1)(iii). Modification of quotas and/or fishing seasons is authorized by regulations at 50 CFR 660.409(b)(1)(i).

In the 2004 annual management measures for ocean salmon fisheries (69 FR 25026, May 5, 2004), NMFS announced the recreational fisheries: the area from the U.S.-Canada Border to Cape Alava, WA (Neah Bay Subarea) would open June 27 through the earlier of September 19 or a 21,050–coho subarea quota, with a subarea guideline of 3,700 chinook; the area from Cape Alava to Queets River, WA (La Push Subarea) would open June 27 through the earlier of September 19 or a 5,200 coho subarea quota, with a subarea guideline of 1,900 chinook; in the area from the Queets River to Leadbetter Point, WA (Westport Subarea) would open June 27 through the earlier of September 19 or a 74,900 coho subarea quota, with a subarea guideline of 30,800 chinook; and the area from Leadbetter Point, WA to Cape Falcon, OR (Columbia River Subarea) would open June 27 through the earlier of September 30 or a 101,250–coho subarea quota, with a subarea guideline of 8,000 chinook. All subareas were restricted to a chinook minimum size limit of 26 inches (66.0 cm) total length. In addition, all of the subarea bag limits were for all salmon, two fish per day, no more than one of which may be a chinook, with all retained coho required to have a healed adipose fin clip.

The recreational fishery in the area from the Queets River, WA to Cape Falcon, OR (Westport and Columbia River Subareaa) was modified by Inseason Action #7 to be open 7 days per week, with a modified daily bag limit of all salmon, two fish per day, and all retained coho must have a healed adipose fin clip, effective Friday, July 23, 2004, thus allowing for the retention of two chinook per day (69 FR 52448, August 26, 2004,).

On August 10, 2004, the RA consulted with representatives of the Pacific Fishery Management Council, Washington Department of Fish and Wildlife, and Oregon Department of Fish and Wildlife by conference call. Information related to catch to date, the chinook and coho catch rates, and effort data indicated that the catch was less than anticipated preseason and that provisions designed to slow the catch of chinook could be modified, by relaxing the size and bag limit provisions. In addition, the Neah Bay subarea was projected to reach its coho quota, and because there were additional coho in the Westport subarea quota, a reallocation of the North of Cape Falcon overall quota could be done while still meeting conservation objectives and without impacting Westport subarea fishers. As a result, on August 10, 2004, the states recommended, and the RA concurred, that effective Friday, August 13, 2004, the recreational fishery from the U.S.-Canada Border to Cape Falcon, OR would be adjusted by the following: Regulations for the area from Cape Alava, WA to Cape Falcon, OR (La Push, Westport, and Columbia River Subareas) would be modified to have a minimum size limit for chinook of 24 inches (61.0 cm) total length; and the daily bag limit for the area from Cape Alava to Queets River, WA (La Push Subarea) would be modified to: "all salmon, two fish per day, and all retained coho must have a healed adipose fin clip," thus allowing for the retention of two chinook per day. In addition, 40,000 coho from Queets River to Leadbetter Point, WA (Westport Subarea) quota would be transferred on an impact neutral basis to the coho quota in the area from the U.S.-Canada Border to Cape Alava, WA (Neah Bay Subarea), thereby increasing the Neah Bay quota by 6,600 coho. All other restrictions that apply to this fishery remain in effect as announced in the 2004 annual management measures and previous inseason actions.

The RA determined that the best available information indicated that the catch and effort data, and projections, supported the above inseason actions recommended by the states. The states manage the fisheries in state waters adjacent to the areas of the U.S. exclusive economic zone in accordance with these Federal actions. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice to fishers of the already described regulatory actions were given, prior to the date the action was effective, by telephone hotline number 206–526–6667 and 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz.

These actions do not apply to other fisheries that may be operating in other areas.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B) because such notification would be impracticable. As previously noted, actual notice of the regulatory actions were provided to fishers through telephone hotline and radio notification. These actions comply with the requirements of the annual management measures for ocean salmon fisheries (69 FR 25026, May 5, 2004), the West Coast Salmon Plan, and regulations implementing the West Coast Salmon Plan 50 CFR 660.409 and 660.411. Prior notice and opportunity for public comment was impracticable because NMFS and the state agencies had insufficient time to provide for prior notice and the opportunity for public comment between the time the fishery catch and effort data were collected to determine the extent of the fisheries, and the time the fishery modifications had to be implemented in order to allow fishers access to the available fish at the time the fish were available. The AA also finds good cause to waive the 30–day delay in effectiveness required under U.S.C. 553(d)(3), as a delay in effectiveness of these actions would limit fishers appropriately controlled access to available fish during the scheduled fishing season by unnecessarily maintaining two restrictions. The action reduced the minimum size limit for chinook to 24 inches (61.0 cm) total length, which allowed for greater chinook salmon retention. The action also allowed fishers to land up to two of any species of salmon, previously only one of the two fish bag limit could be a chinook salmon.

These actions are authorized by 50 CFR 660.409 and 660.411 and are exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 31, 2004.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 04–20235 Filed 9–3–04; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 69, No. 172
Tuesday, September 7, 2004

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 784

RIN 0560—AH15

2004 Ewe Lamb Replacement and Retention Payment Program

AGENCY: Farm Service Agency, USDA.

ACTION: Proposed Rule.

SUMMARY: This proposed rule invites comments on a new program, the 2004 Ewe Lamb Replacement and Retention Payment Program, as authorized by clause (3) of section 32 of the Act of August 24, 1935, as amended. The proposed program will assist producers of sheep and lambs by providing up to $18 million total, in direct cash payments, to encourage the replacement and retention of ewe lamb breeding stock during the one-year period from August 1, 2003, through July 31, 2004. This action is designed to provide immediate financial assistance to sheep and lamb producers who have recently experienced reduced production and flock size, low prices and poor market conditions.

DATES: Comments on this rule must be received on or before October 7, 2004 in order to be assured of consideration. Comments on the information collections in this rule must be received by November 8, 2004 in order to be assured of consideration.

ADDRESSES: The Farm Service Agency invites interested persons to submit comments on this proposed rule and on the collection of information. Comments may be submitted by any of the following methods:

- E-Mail: Send comments to *danielle_cooke@wdc.fsa.usda.gov.*
- *Fax:* Submit comments by facsimile transmission to: (202) 690–3307.
- Mail: Send comments to Grady Bilberry, Director, Price Support Division (PSD), Farm Service Agency, United States Department of Agriculture (USDA), STOP 0512, Room 4095–S, 1400 Independence Avenue, SW., Washington, DC 20250–0512.
- *Hand Delivery or Courier:* Deliver comments to the above address * * *
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Comments on the information collection requirements of this rule must also be sent to the addresses listed in the Paperwork Reduction Act section of this Notice.

Comments may be inspected in the Office of the Director, PSD, FSA, USDA, Room 4095 South Building, Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. A copy of this proposed rule is available on the PSD home page at *http://www.fsa.usda.gov/dafp/psd/.*

FOR FURTHER INFORMATION CONTACT: Danielle Cooke, phone: (202) 720–1919; e-mail: *Danielle_Cooke@wdc.fsa.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Clause (3) of section 32 of the Act of August 24, 1935, as amended, authorizes the Secretary of Agriculture to "reestablish farmers purchasing power by making payments in connection with the normal production of any agricultural commodity for domestic consumption."

There are an estimated 66,800 sheep and lamb operations in the United States that account for about one percent of the value of all U.S. farm production. A dramatic increase in imported lamb meat over the last several years has resulted in reduced incomes for the producers of domestically raised sheep and lambs. The reduction in income has forced U.S. producers to reduce the production of sheep and lambs and overall flock size. The reduced production and flock size, along with the long-term reduced market prices for lambs, has significantly reduced the overall purchasing power of producers, including the ability to invest in improved breeding stock genetics. Ewe lamb replacement and retention in the U.S. again decreased from July 2002 to July 2003, with the 2003 lamb crop expected to total 4.13 million, which is down five percent from the previous year. Extreme drought conditions over the past several years in many of the sheep-producing areas of the U.S. have also adversely impacted the profitability of the industry due to reduced pasture carrying capacity and forage availability.

This proposed rule addresses that situation by providing for a new program. It is similar to the program previously provided for ewe retention, which was codified in 7 CFR part 784. Payments to sheep and lamb operations under the program will strengthen the entire industry by providing cash benefits while establishing larger and genetically improved flocks that will help the U.S. lamb industry achieve sustained competitiveness, while respecting international trade obligations. The program will only be administered for the base period of August 1, 2003 through July 31, 2004. Program benefits will be limited to eligible ewe lambs retained during this base period under this one-time only program, which will end at the conclusion of the application period announced by FSA and upon the dispersal of available funds to eligible program participants approved for benefits. The rule contemplates that $18 million will be available for the program and limits expenditures to that amount with a provision for pro-rating payments. In the event that approval of all eligible applications would result in expenditures in excess of the amount available, FSA will prorate funds by a national factor to reduce the expected payments to be made to the amount available. Subject to such proration and the availability of funds, the maximum payment amount will be capped at $18 per eligible ewe.

Payments under this new program will provide those eligible for the payments with an immediate infusion of funds to help pay to replace and retain ewe lamb breeding stock and meet other financial obligations.

Eligible sheep and lamb operations making application for payments under this part must certify that they will maintain the qualifying ewe lambs in the herd for at least one complete offspring lambing cycle and actually maintain the lambs for the period in accord with that certification. The offspring lambing cycle would be at least one cycle in which the lamb could bring its own lamb to weaning in the normal amount of time. Subject to available funds and prorating, the

eligible operation can receive payments for all ewes held by the operation that long which were owned during the base period. Because of the required holding period, compliance will not be completed until a time after the close of the base period. (The base period was August 1, 2003 through July 31, 2004). Ewes, to qualify, must meet certain quality standards, for which sheep and lamb producers must also certify. In addition, eligible sheep and lamb operations must be in the business of producing and marketing agricultural products at the time of filing an application for program benefits and must certify that they are in compliance with related requirements described in 9 CFR parts 54 and 79. Sheep and lamb operations determined to have made any false certifications or adopted any misrepresentation, scheme or device that defeats the program purpose will be required to refund any payments issued under this program with interest and will be ineligible to participate in this program and any other USDA program, in addition to other civil, criminal, or administrative remedies that may apply. Payments are subject to all requirements of the regulations and program documents. The proposed rule follows the rules for the previous ewe retention program with some clarification. Eligible sheep and lamb operations must apply for payments during the application period set by FSA pursuant to these regulations. Information provided on applications and supporting documentation submitted to FSA will be subject to verification by FSA. Applications to be verified will be selected randomly. Penalties for false certification can be easily assessed and are expected to minimize such certifications. Adequate records must be maintained by the sheep and lamb operation to verify the eligibility of the operation and the qualifying ewe lambs. Documentation used to support eligibility may include, but is not limited to sales receipts, farm management records, veterinarian certifications, and scrapie program forms. The documentation should be verifiable and include adequate information to substantiate eligibility, such as, date of lamb purchase or birth, lamb identification and control information, number of ewe lambs purchased or retained and scrapie program identification numbers. In addition, adequate documentation that includes the date of death must be maintained for any death loss of qualifying ewe lambs.

Sheep and lamb operations may, during the applicable application period established by the Deputy Administrator for Farm Programs for FSA, apply in person at FSA county offices during regular business hours. Alternatively, program applications may be obtained by mail, telephone, and facsimile from their designated FSA county office or obtained via the Internet at *http://www.fsa.usda.gov/dafp/psd/*. This new program does not replace the previous ewe retention program. To the extent of any outstanding issues, the previous program will be operated under the regulations issued in connection with that program.

Executive Order 12866

This proposed rule is issued in conformance with Executive Order 12866 and has been determined to be significant and has been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule because the FSA is not required by 5 U.S.C. 533 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this proposed rule.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is necessary for this proposed rule.

Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988. The provisions of this rule preempt State laws to the extent such laws are inconsistent with the provisions of this proposed rule. Before any legal action may be brought regarding determinations of this rule, the administrative appeal provisions set forth at 7 CFR parts 11 and 780 must be exhausted.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3014, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates Reform Act of 1995

This proposed rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act of 1995

In accordance with the Paperwork Reduction Act of 1995, FSA intends to request approval by OMB of an information collection required to support the proposed rule establishing a new ewe lamb replacement and retention payment program for sheep and lamb producers. Copies of the information collection may be obtained from Linda Turner, the Agency Information Collection Coordinator, at (202) 690–1855.

Title: 2004 Ewe Lamb Replacement and Retention Payment Program.

OMB Control Number: 0560–New.

Type of Request: Request for Approval of a New Information Collection.

Abstract: Sheep and lamb operations are eligible to receive direct payments provided they make certifications that attest to their eligibility to receive such payments. These operations must certify, as appropriate, with respect to: (1) The number of ewe lambs not older than 18 months of age that were purchased or retained by the sheep and lamb operation during the period of August 1, 2003, through July 31, 2004, to replenish the breeding stock of the sheep and lamb operation and did not receive funds under the Lamb Meat Adjustment Assistance Program (LMAAP) for the same ewe lamb; (2) retention of the qualifying ewe lambs in the herd for at least one complete offspring lambing cycle; (3) certain characteristics of the qualifying ewe lambs as determined by the Secretary; (4) identification of the qualifying ewe lambs according to their State identification requirements and through the Animal Plant and Health Inspection Service (APHIS) Voluntary Scrapie Flock Certification Program or the APHIS Scrapie Eradication Program; and (5) that the operation is still in the business of agricultural production. The information will be used by FSA to determine the program eligibility of the sheep and lamb operation. FSA considers the information collected essential to prudent eligibility determinations and payment calculations. Additionally, without accurate information on sheep and lamb operations, the national payment rate

would be inaccurate, resulting in payments being made to ineligible recipients and compromising the integrity and accuracy of the program.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 5 minutes per response.

Respondents: Sheep and Lamb Operations.

Estimated Number of Respondents: 63,000.

Estimated Number of Responses per Respondent: 5.

Estimated Total Annual Burden on Respondents: 27,540 hours.

Proposed topics for comment include: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information collected; or (d) ways to minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to Grady Bilberry, Director, Price Support Division, Farm Service Agency, United States Department of Agriculture, STOP 0512, 1400 Independence Avenue, SW., Washington, DC 20250–0512 or telephone (202) 720–7901.

Executive Order 12612

It has been determined that this proposed rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 7 CFR Part 784

Agriculture, Livestock, Reporting and record keeping requirements.

Accordingly, 7 CFR Part 784 is proposed to be revised to read as follows:

PART 784—2004 EWE LAMB REPLACEMENT AND RETENTION PAYMENT PROGRAM

Sec.

Authority: Clause (3) of section 32 of the Act of August 24, 1935, as amended; 7 U.S.C. 612c.

§ 784.1 Applicability.

(a) Subject to the availability of funds, this part establishes terms and conditions under which the 2004 Ewe Lamb Replacement and Retention Payment Program will be administered. The purpose of this program is to provide benefits to sheep and lamb operations, pursuant to clause (3) of section 32 of the Act of August 24, 1935, as amended (7 U.S.C. 612c), in order to enhance their purchasing power in connection with the normal production of sheep and lambs for domestic consumption and increase the size of the United States breeding flock. Increasing flock size will, in turn, boost producers' purchasing power and competitive position in the marketplace by fostering a sustainable industry, increasing industry efficiency through larger volumes of production, and enhancing the value of products in the marketplace.

(b) Unless otherwise determined by the Farm Service Agency (FSA) in accordance with the provisions of this part, the amount that may be expended under this part for program payments shall not exceed $18 million. Claims that exceed that amount will be prorated in accordance with the provisions for proration that are contained in this part.

(c) Producers must comply with all provisions of this part and 7 CFR 718.9—Finality Rule.

§ 784.2 Administration.

(a) This part shall be administered by FSA under the general direction and supervision of the Deputy Administrator for Farm Programs, FSA. The program shall be carried out in the field by FSA State and county committees (State and county committees).

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations in this part.

(c) The State committee shall take any action required by this part that has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, any action taken by such county committee that is not in accordance with the regulations of this part; or

(2) Require a county committee to withhold taking any action that is not in accordance with the regulations of this part.

(d) No delegation herein to a State or county committee shall preclude the Deputy Administrator for Farm Programs, FSA, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

(e) The Deputy Administrator for Farm Programs, FSA, may authorize State and county committees to waive or modify deadlines and other program requirements in cases where timeliness or failure to meet such other requirements does not adversely affect the operation of the program.

(f) The program described under this part is a one time only program that will be administered with respect to eligibility and qualifying factors occurring during the base period of August 1, 2003 through July 31, 2004.

§ 784.3 Definitions.

The definitions set forth in this section shall be applicable for all purposes of administering the 2004 Ewe Lamb Replacement and Retention Payment Program established by this part.

Agricultural Marketing Service or AMS means the Agricultural Marketing Service of the Department.

Application means the Ewe Lamb Replacement and Retention Payment Program Application.

Application period means the date established by the Deputy Administrator for producers to apply for program benefits.

Base period means the period from August 1, 2003 through July 31, 2004, that ewe lambs must meet all qualifying eligibility criteria.

Ewe lamb means a female lamb no more than 18 months of age that has not produced an offspring.

Farm Service Agency or FSA means the Farm Service Agency of the Department.

Foot rot means an infectious, contagious disease of sheep that causes severe lameness and economic loss from decreased flock production.

Lambing cycle means the period of time from birth to weaning.

Parrot mouth means a genetic defect resulting in the failure of the incisor teeth to meet the dental pad correctly.

Person means any individual, group of individuals, partnership, corporation, estate, trust, association, cooperative, or other business enterprise or other legal entity who is, or whose members are, a citizen or citizens of, or legal resident alien or aliens in the United States.

Sheep and lamb operation means any self-contained, separate enterprise operated as an independent unit exclusively within the United States in which a person or group of persons raise sheep and/or lambs.

United States means the 50 States of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico.

§ 784.4 Time and method of application.

(a) A request for benefits under this part must be submitted on the Ewe Lamb Replacement and Retention Program Application. The application form may be obtained in person, by mail, by telephone, or by facsimile from any county FSA office. In addition, applicants may download a copy of the form at *http://www.usda.gov/dafp/psd/*.

(b) The form may be obtained from and must be submitted to the FSA county office serving the county where the sheep and lamb operation is located. The completed form must be received by the FSA county office by the date established by the Agency. Applications not received by that date will be disapproved and returned as not having been timely filed and the sheep and lamb operation filing the application will not be eligible for benefits under this program.

(c) The sheep and lamb operation requesting benefits under this part must certify to the accuracy of the information provided in their application for benefits. All information provided is subject to verification and spot checks by FSA. Refusal to allow FSA or any other agency of the Department of Agriculture to verify any information provided will result in a determination of ineligibility. Data furnished by the applicant will be used to determine eligibility for program benefits. Providing a false certification may be subject to additional civil and criminal sanctions.

(d) The sheep and lamb operation requesting benefits under this part must maintain accurate records that document that they meet all eligibility requirements specified herein, as may be requested by FSA. Acceptable forms of supporting documentation include, but are not limited to: sales receipts, farm management records, veterinarian certifications, scrapie program forms and identification numbers, as well as, other types of documents that prove the eligibility of the qualifying ewe lambs and the sheep and lamb operation. The supporting documentation provided must at a minimum include at least the following: date of lamb purchase or date of birth, date of lamb death (if applicable), lamb identification and control information, number of ewe lambs purchased or retained, and scrapie program identification numbers.

§ 784.5 Payment eligibility.

(a) Payments can be made, as agreed to by FSA and subject to the availability of funds, for eligible ewe lambs acquired or held during the base period by eligible sheep and lamb operations. Payments may be made for eligible ewe lambs held continuously by the operation, through the end of the compliance period, from the time of the first possession of the ewe lamb. The payment rate cannot exceed the rate provided for in § 784.6 or it may be prorated pursuant to § 784.7. For purposes of this section the "base period" is the period from August 1, 2003 through July 31, 2004.

(b) For the ewe lamb to be eligible, a sheep and lamb operation must certify that the ewe lamb:

(1) During at least part of the base period was not older than 18 months of age;

(2) Had not produced an offspring; and

(3) At the time of certification, does not possess the following characteristics:

(i) Parrot mouth; or

(ii) Foot rot.

(c) Sheep and lamb operation must certify and agree to:

(1) Maintain the qualifying ewe lambs in the herd for at least one complete, normal offspring lambing cycle and actually maintain the lambs for that period in accord with that certification. The "offspring" lambing cycle refers to the time in which the qualifying ewe lamb's own offspring would be weaned, in a normal course, from that qualifying ewe if the ewe were to have offspring, irrespective of whether the ewe actually produces offspring.

(2) Upon request by an AMS agent, allow the AMS agent to verify that the ewe lambs meet qualifying characteristics.

(3) Maintain documentation of any death loss of qualifying ewe lambs.

(4) Agree to refund any payments made with respect to any ewe lamb or offspring that has died before completing the full program requirements where said deaths for the operation exceed 10 percent.

(5) Be in compliance with all requirements relating to scrapie, as described in 9 CFR parts 54 and 79.

(d) To be eligible for any payments addressed under this section, a sheep and lamb operation must be engaged in the business of producing and marketing agricultural products at the time of filing the application.

(e) In addition, to be eligible for payment, a sheep and lamb operation must submit a timely application during the application period for benefits and comply with all other terms and conditions of this part or that are contained in the application to be eligible for such benefits.

§ 784.6 Rate of payment and limitations on funding.

(a) Subject to the availability of funds and to the proration provisions of § 784.7, payments for qualifying operations shall be $18 for each qualifying ewe lamb retained or purchased for breeding purposes.

§ 784.7 Availability of funds.

Total payments under this part, unless otherwise determined by the FSA, cannot exceed $18 million. In the event that approval of all eligible applications would result in expenditures in excess of the amount available, FSA shall prorate the available funds by a national factor to reduce the expected payments to be made to the amount available. The payment shall be made based on the national factored rate as determined by FSA. FSA shall prorate the payments in such manner as it, in its sole discretion, finds fair and reasonable.

§ 784.8 Appeals.

Any sheep and lamb operation that is dissatisfied with a determination made pursuant to this part may make a request for reconsideration or appeal of such determination in accordance with the appeal regulations set forth at parts 11 and 780 of this title.

§ 784.9 Misrepresentation and scheme or device.

(a) A sheep and lamb operation shall be ineligible to receive assistance under this program or any other USDA program if it is determined by the State committee or the county committee to have:

(1) Adopted any scheme or device that tends to defeat the purpose of this program;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination.

(b) Any funds disbursed pursuant to this part to any person or operation engaged in a misrepresentation, scheme, or device, shall be refunded with interest together with such other sums as may become due. Any sheep and lamb operation or person engaged in acts prohibited by this section and any sheep and lamb operation or person receiving payment under this part shall be jointly and severally liable with other persons or operations involved in such claim for benefits for any refund due under this section and for related charges. The remedies provided in this part shall be in addition to other civil, criminal, or administrative remedies that may apply.

§ 784.10 Estates, trusts, and minors.

(a) Program documents executed by persons legally authorized to represent estates or trusts will be accepted only if such person furnishes evidence of the authority to execute such documents.

(b) A minor who is otherwise eligible for assistance under this part must, also:

(1) Establish that the right of majority has been conferred on the minor by court proceedings or by statute;

(2) Show a guardian has been appointed to manage the minor's property and the applicable program documents are executed by the guardian; or

(3) Furnish a bond under which the surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

§ 784.11 Death, incompetence, or disappearance.

In the case of death, incompetence, disappearance or dissolution of a person that is eligible to receive benefits in accordance with this part, such person or persons specified in 7 CFR part 707 may receive such benefits, as determined appropriate by FSA.

§ 784.12 Maintaining records.

Persons making application for benefits under this program must maintain accurate records and accounts that will document that they meet all eligibility requirements specified herein. Such records and accounts must be retained for 3 years after the date of payment to the sheep and lamb operations under this program. Destruction of the records after such date shall be at the risk of the party undertaking the destruction.

§ 784.13 Refunds; joint and several liability.

(a) In the event there is a failure to comply with any term, requirement, or condition for payment arising under the application, or this part, and if any refund of a payment to FSA shall otherwise become due in connection with the application, or this part, all payments made under this part to any sheep and lamb operation shall be refunded to FSA together with interest as determined in accordance with paragraph (c) of this section and late payment charges as provided in part 1403 of this title.

(b) All persons signing a sheep and lamb operation's application for payment as having an interest in the operation shall be jointly and severally liable for any refund, including related charges, that is determined to be due for any reason under the terms and conditions of the application or this part with respect to such operation.

(c) Interest shall be applicable to refunds required of any person under this part if FSA determines that payments or other assistance was provided to a person who was not eligible for such assistance. Such interest shall be charged at the rate of interest that the United States Treasury charges the Commodity Credit Corporation for funds, from the date FSA made such benefits available to the date of repayment or the date interest increases as determined in accordance with applicable regulations. FSA may waive the accrual of interest if FSA determines that the cause of the erroneous determination was not due to any action of the person.

(d) Interest determined in accordance with paragraph (c) of this section may be waived at the discretion of FSA alone for refunds resulting from those violations determined by FSA to have been beyond the control of the person committing the violation.

(e) Late payment interest shall be assessed on all refunds in accordance with the provisions of, and subject to the rates prescribed in 7 CFR part 792.

(f) Any excess payments made by FSA with respect to any application under this part must be refunded.

(g) In the event that a benefit under this subpart was provided as the result of erroneous information provided by any person, the benefit must be repaid with any applicable interest.

§ 784.14 Offsets and withholdings.

FSA may offset or withhold any amounts due FSA under this subpart in accordance with the provisions of 7 CFR part 792, or successor regulations, as designated by the Department.

§ 784.15 Assignments.

Any person who may be entitled to a payment may assign his rights to such payment in accordance with 7 CFR part 1404 or successor regulations as designated by the Department.

§ 784.16 Termination of program.

This program will be terminated after payment has been made to those applications certified as eligible, pursuant to the application period established in § 784.4.

Signed at Washington, DC, August 31, 2004.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 04–20186 Filed 9–3–04; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19022; Directorate Identifier 2004–NM–122–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600, –700, –700C, –800, and –900 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes. This proposed AD would require repetitive detailed, low frequency eddy current, and high frequency eddy current inspections of the webs of the aft pressure bulkhead at body station 1016 for cracks, and corrective action if necessary. This proposed AD is prompted by a report of cracks found, during fatigue testing, at several of the fastener rows in the web lap splices at the dome apex of the aft pressure bulkhead. We are proposing this AD to detect and correct fatigue cracks in the webs of the aft pressure bulkhead, which could result in rapid decompression of the airplane.

DATES: We must receive comments on this proposed AD by October 22, 2004.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov*

and follow the instructions for sending your comments electronically.

- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW, Nassif Building, room PL–401, Washington, DC 20590.
- By fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT: *Technical information:* Howard Hall, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6430; fax (425) 917–6590.

Plain language information: Marcia Walters, *marcia.walters@faa.gov*.

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

The FAA has implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, new AD actions are posted on DMS and assigned a docket number. We track each action and assign a corresponding directorate identifier. The DMS AD docket number is in the form "Docket No. FAA–2004–99999." The Transport Airplane Directorate identifier is in the form "Directorate Identifier 2004–NM–999–AD." Each DMS AD docket also lists the directorate identifier ("Old Docket Number") as a cross-reference for searching purposes.

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include "Docket No. FAA–2004–19022; Directorate Identifier 2004–NM–122–AD" in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that website, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov*.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You can get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov*.

Examining the Docket

You can examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

We have received a report that, during fatigue testing, the manufacturer found cracks at several of the fastener rows in the web lap splices at the dome apex of the aft pressure bulkhead on a Boeing 737–800 series airplane. Cracks were found in three of the seven webs. The single rivet located where each of the webs transition up 0.032 inches over the adjacent web causes pull down loading, which leads to cracks at the rivet holes of the web lap splices. This condition, if not detected and corrected, could result in rapid decompression of the airplane.

The web lap splices on certain Model 737–600, –700, –700C, and –900 series airplanes are identical to those on the affected Model 737–800 series airplanes. Therefore, all of these models may be subject to the same unsafe condition.

Relevant Service Information

We have reviewed Boeing Service Bulletin 737–53–1251, dated June 3, 2004. The service bulletin describes procedures for doing repetitive detailed inspections, low frequency eddy current (LFEC) inspections, and high frequency eddy current (HFEC) inspections of the webs of the aft pressure bulkhead at body station 1016 from the aft side at the dome apex for cracks; and contacting the manufacturer for repair instructions if cracks are found. We have determined that accomplishing the actions specified in the service bulletin will adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. Therefore, we are proposing this AD, which would require doing repetitive detailed inspections, LFEC inspections, and HFEC inspections of the webs of the aft pressure bulkhead at body station 1016 from the aft side at the dome apex for cracks, and corrective action if necessary. The corrective action includes repairing any crack found during any inspection in accordance with a method approved by the FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the FAA to make those findings. The proposed AD would require you to use the service information described previously to perform these actions, except as discussed under "Differences Between the Proposed AD and the Service Bulletin."

Differences Between the Proposed AD and the Service Bulletin

Operators should note that, although the service bulletin does not list a grace period in the compliance times, this proposal adds a grace period to the compliance times. The FAA finds that such a grace period will keep airplanes from being grounded unnecessarily.

Operators should also note that although the service bulletin specifies that operators may contact the manufacturer for disposition of certain repair conditions, this proposed AD would require operators to repair those conditions per a method approved by the FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company DER

who has been authorized by the FAA to make those findings.

Costs of Compliance

This proposed AD would affect about 457 airplanes of U.S. registry and 1,166 airplanes worldwide. The proposed actions would take about 8 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $237,640, or $520 per airplane, per inspection cycle.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2004–19022; Directorate Identifier 2004–NM–122–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by October 22, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes, certificated in any category; as listed in Boeing Service Bulletin 737–53–1251, dated June 3, 2004.

Unsafe Condition

(d) This AD was prompted by a report of cracks found, during fatigue testing, at several of the fastener rows in the web lap splices at the dome apex of the aft pressure bulkhead. We are issuing this AD to detect and correct fatigue cracks in the webs of the aft pressure bulkhead, which could result in rapid decompression of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Initial and Repetitive Inspections

(f) Prior to accumulating 26,000 total flight cycles or within 4,000 flight cycles after the effective date of this AD, whichever occurs later: Do a detailed inspection, low frequency eddy current inspection, and high frequency eddy current inspection of the webs of the aft pressure bulkhead at body station 1016 for cracks, in accordance with Boeing Service Bulletin 737–53–1251, dated June 3, 2004. Repeat the inspections thereafter at intervals not to exceed 4,000 flight cycles.

Note 1: For the purposes of this AD, a detailed inspection is: "An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required."

Corrective Action

(g) If any crack is found during any inspection required by paragraph (f) of this AD: Before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Seattle ACO, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the approval must specifically refer to this AD.

Issued in Renton, Washington, on August 27, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–20212 Filed 9–3–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19023; Directorate Identifier 2004–NM–123–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A318, A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Airbus Model A318, A319, A320, and A321 series airplanes. This proposed AD would require removing two maintenance lights in the hydraulics bay, disconnecting the wiring for the lights, and modifying the switches. This proposed AD is prompted by underlying safety issues involved in fuel tank explosions on several large transport airplanes. We are proposing this AD to prevent an ignition source for fuel vapor in the hydraulics bay, which could result in fire or explosion in the adjacent center wing fuel tank.

DATES: We must receive comments on this proposed AD by October 7, 2004.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC 20590.

- *By fax:* (202) 493–2251.
- *Hand delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

The FAA has implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, new AD actions are posted on DMS and assigned a docket number. We track each action and assign a corresponding directorate identifier. The DMS AD docket number is in the form "Docket No. FAA–2004–99999." The Transport Airplane Directorate identifier is in the form "Directorate Identifier 2004–NM–999–AD." Each DMS AD docket also lists the directorate identifier ("Old Docket Number") as a cross-reference for searching purposes.

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA–2004–19023; Directorate Identifier 2004–NM–123–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of our docket Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov*.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You can get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov*.

Examining the Docket

You can examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

We have examined the underlying safety issues involved in recent fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled "Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements" (67 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 ("SFAR 88," Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (*i.e.*, type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: single failures, single failures in combination with another latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

The Joint Aviation Authorities (JAA) has issued a regulation that is similar to SFAR 88. (The JAA is an associated body of the European Civil Aviation Conference (ECAC) representing the civil aviation regulatory authorities of a number of European States who have agreed to co-operate in developing and implementing common safety regulatory standards and procedures.) Under this regulation, the JAA stated that all members of the ECAC that hold type certificates for transport category airplanes are required to conduct a design review against explosion risks.

We have determined that the actions identified in this proposed AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified us that an unsafe condition may exist on certain Airbus Model A318, A319, A320, and A321 series airplanes. The DGAC advises that a design review prompted by the JAA regulation showed that certain maintenance lights in the hydraulics bay of these airplanes should be removed. If these lights are not removed, they could be an ignition source for fuel vapor in the hydraulics bay, and cause fire or explosion in the adjacent center wing fuel tank.

Relevant Service Information

Airbus has issued Service Bulletin A320–92–1032, dated March 8, 2004. The service bulletin describes

procedures for removing two maintenance lights in the hydraulics bay, disconnecting the wiring for the lights, and modifying the switches. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The DGAC mandated the service information and issued French airworthiness directive F–2004–073, dated May 26, 2004, to ensure the continued airworthiness of these airplanes in France.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. We have examined the DGAC's findings, evaluated all pertinent information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require removing two maintenance lights in the hydraulics bay, disconnecting the wiring for the lights, and modifying the switches. The proposed AD would require you to use the service information described previously to perform these actions, except as discussed under "Difference Between the Proposed AD and the French Airworthiness Directive."

Difference Between the Proposed AD and the French Airworthiness Directive

The applicability of French airworthiness directive F–2004–073 excludes airplanes that accomplished Airbus Service Bulletin A320–92–1032 in service. However, we have not excluded those airplanes in the applicability of this proposed AD; rather, this proposed AD includes a requirement to accomplish the actions specified in that service bulletin. This requirement would ensure that the actions specified in the service bulletin and required by this proposed AD are accomplished on all affected airplanes. Operators must continue to operate the airplane in the configuration required by this proposed AD unless an alternative method of compliance is approved.

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Remove lights, disconnect wires and modify switches ...	3	$65	$70	$265	648	$171,720

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Airbus: Docket No. FAA–2004–19023; Directorate Identifier 2004–NM–123–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by October 7, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A318, A319, A320, and A321 series airplanes; certificated in any category; except those airplanes on which Airbus Modification 33518 has been accomplished in production.

Unsafe Condition

(d) This AD was prompted by underlying safety issues involved in fuel tank explosions on several large transport airplanes. We are issuing this AD to prevent an ignition source for fuel vapor in the hydraulics bay, which could result in fire or explosion in the center wing fuel tank.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Modification

(f) Within 19 months after the effective date of this AD, remove maintenance lights 9LL and 10LL from the hydraulics bay, and disconnect the wiring for the lights, and modify the 12LL switches. Do the actions in accordance with Airbus Service Bulletin A320–92–1032, dated March 8, 2004.

Alternative Methods of Compliance (AMOCs)

(g) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Related Information

(h) French airworthiness directive F–2004–073, dated May 26, 2004, also addresses the subject of this AD.

Issued in Renton, Washington, on August 27, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–20213 Filed 9–3–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19003; Directorate Identifier 2003–NM–245–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –200C, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. This proposed AD would require repetitive inspections for cracks in the fuselage skin, doubler, bearstrap, and frames surrounding the main, forward, and aft cargo doors; and repair of any cracking. This proposed AD also would require inspections of certain existing repairs for cracking, and related corrective action if cracking is found. This proposed AD is prompted by reports of multiple fatigue cracks in the fuselage skin and bonded skin doubler, bearstrap, and doorway frames surrounding the forward and aft cargo doors. We are proposing this AD to find and fix fatigue cracking in the fuselage skin, doubler, bearstrap, and frames, which could result in reduced structural integrity of the frames, possible loss of a cargo door, and consequent rapid decompression of the fuselage.

DATES: We must receive comments on this proposed AD by October 22, 2004.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC 20590.
- By fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Technical information: Howard Hall, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6430; fax (425) 917–6590.

Plain language information: Marcia Walters, *marcia.walters@faa.gov*.

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

The FAA has implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, new AD actions are posted on DMS and assigned a docket number. We track each action and assign a corresponding directorate identifier. The DMS AD docket number is in the form "Docket No. FAA–2004–99999." The Transport Airplane Directorate identifier is in the form "Directorate Identifier 2004–NM–999–AD." Each DMS AD docket also lists the directorate identifier ("Old Docket Number") as a cross-reference for searching purposes.

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include "Docket No. FAA–2004–19003; Directorate Identifier 2003–NM–245–AD" in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that website, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov*.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You can get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov*.

Examining the Docket

You can examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

Background

The FAA previously issued related rulemaking applicable to certain Boeing Model 737 series airplanes, as follows:

AD 88–11–12, amendment 39–5890 (53 FR 18077, May 20, 1988). That AD requires structural inspection of the forward lower cargo doorway frames, and repair if necessary. That AD also requires replacement of certain repaired parts previously installed.

AD 93–14–10, amendment 39–8634 (58 FR 43547, August 17, 1993). That AD requires structural inspections to detect cracks of the forward and aft body frames adjacent to the aft lower cargo door and repair of cracked parts, and provides an optional modification. That AD also requires certain repetitive inspections to continue after installation of the optional modification.

FAA's Determination Since Issuance of AD 88–11–12 and AD 93–14–10

Since we issued those ADs, we have received reports of multiple fatigue cracks in the fuselage skin and bonded skin doubler, bearstrap, and doorway frames surrounding the forward and aft cargo doors on certain Boeing Model

737 series airplanes. Several cracks have also been found in the fuselage skin/doubler and bearstrap of the upper corners of the main cargo door. Additionally, during structural inspections, cracks were found in the bearstrap under the fuselage frame flanges at the edges of the forward cargo door. In two cases, cracks were found in the fuselage frames of the aft cargo door where steel repair doublers had been installed using the requirements of AD 93–14–10. In another case, cracks were found in the unreinforced area above the aluminum repair doubler, which had also been installed using the requirements of AD 93–14–10. A recent inspection done on an airplane having 73,080 total flight cycles revealed cracks in the forward fuselage frame and adjacent skin/doubler and bearstrap of the forward cargo door. Such fatigue cracking, if not found and fixed, could result in reduced structural integrity of the frames, possible loss of a cargo door, and consequent rapid decompression of the fuselage.

Explanation of Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 737–53A1228, dated July 10, 2003, which describes procedures for repetitive detailed, general visual, and high and low frequency eddy current inspections for cracks in the fuselage skin, doubler, bearstrap, and frames surrounding the main, forward, and aft cargo doors, and repair of any crack found. The service bulletin also describes procedures for repetitive inspections for cracks in certain existing repairs in the subject areas, and related corrective action.

The corrective action includes alternative inspections or replacement of the repaired component, depending on the cracking damage found. The service bulletin recommends that operators contact Boeing for certain repair instructions. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

This service bulletin recommends compliance times at the following approximate intervals:

1. For the detailed and general inspections of the forward and aft cargo door cutouts, the inspection threshold is before the accumulation of 50,000 total flight cycles or within 4,000 flight cycles after release of the service bulletin, whichever is later. The inspections are repeated at intervals ranging from 4,000 flight cycles to 12,000 flight cycles.

2. For the detailed and high frequency eddy current (HFEC) inspections of the main cargo door cutout, the inspection threshold is before the accumulation of 20,000 total flight cycles or within 4,000 flight cycles after release of the service bulletin, whichever is later. The inspections are repeated at intervals not to exceed 12,000 flight cycles.

3. For the detailed and HFEC inspections of the forward cargo doorway frame, the inspection threshold is before the accumulation of 20,000 total flight cycles or within 4,000 flight cycles after release of the service bulletin, whichever is later. The inspections are repeated at intervals not to exceed 4,000 flight cycles.

4. For the general visual, HFEC and low frequency eddy current inspections of the aft cargo doorway frame, the inspection threshold ranges between 20,000 and 40,000 total flight cycles or within 4,000 flight cycles after release of the service bulletin, whichever is later. The inspections are repeated at intervals not to exceed 4,000 flight cycles.

5. If the frame is replaced, the inspection threshold starts from the time the frame was replaced. If the frame is repaired, the inspection threshold starts from the time the repair was installed, or the total airplane cycles if it is unknown when the repair was installed.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. The proposed AD would require you to use the service information described previously to perform the actions, except as discussed under "Differences Between the Proposed AD and Service Bulletin."

Differences Between Proposed AD and Service Bulletin

The service bulletin specifies compliance times relative to the date of the service bulletin; however, this proposed AD would require compliance within the thresholds specified in paragraph 1.E., "Compliance" of the service bulletin, after the effective date of the AD.

The service bulletin recommends reporting any discrepancies to the manufacturer; however, this proposed AD does not include that requirement.

Although the service bulletin specifies that operators may contact the manufacturer for disposition of certain repair conditions, this proposed AD would require operators to repair those conditions using a method approved by the Manager of the Seattle Aircraft Certification Office of the FAA, or using data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

Costs of Compliance

There are about 3,132 airplanes of the affected design in the worldwide fleet. We estimate that 870 airplanes of U.S. registry would be affected by this proposed AD. We provide the following cost estimates to comply with this proposed AD, per inspection cycle:

Group	Work hours	Hourly labor rate	Parts	Cost per airplane
1	24	$65	$0	$1,560
2 and 4	28	65	0	1,820
3 and 5	30	65	0	1,950
6 and 7	28	65	0	1,820

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2004–19003; Directorate Identifier 2003–NM–245–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by October 22, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Model 737–100, –200, –200C, –300, –400, and –500 series airplanes; certificated in any category.

Unsafe Condition

(d) This AD was prompted by reports of multiple fatigue cracks in the fuselage skin and bonded skin doubler, bearstrap, and doorway frames surrounding the forward and aft cargo doors. We are issuing this AD to find and fix fatigue cracking in the fuselage skin, doubler, bearstrap, and frames, which could result in reduced structural integrity of the frames, possible loss of a cargo door, and consequent rapid decompression of the fuselage.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Initial and Repetitive Inspections/Corrective Action

(f) Do the applicable detailed, general visual, and low and high frequency eddy current inspections for cracks in the fuselage skin, doubler, bearstrap, and frames surrounding the main, forward, and aft cargo doors, and for cracks in existing repairs, as specified in Tables 1, 2, and 3, as applicable, of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 737–53A1228, dated July 10, 2003. Do the inspections at the initial compliance times listed in Tables 1, 2, and 3, as applicable, of paragraph 1.E., "Compliance," of the service bulletin; except, where the service bulletin specifies a compliance time after the service bulletin date, this AD requires compliance within the specified compliance time after the effective date of this AD. Do the inspections in accordance with the Accomplishment Instructions of the service bulletin. Repeat the inspections within the repetitive inspection intervals listed in Tables 1, 2, and 3 of paragraph 1.E., "Compliance," of the service bulletin.

(g) If any crack is found during any inspection: Repair before further flight in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1228, dated July 10, 2003. Where the service bulletin specifies contacting the manufacturer for disposition of certain repair conditions, repair before further flight in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically refer to this AD.

No Reporting Required

(h) Although the service bulletin referenced in this AD recommends reporting any discrepancies to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, Seattle ACO, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the approval must specifically refer to this AD.

Issued in Renton, Washington, on August 26, 2004.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–20209 Filed 9–3–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18999; Directorate Identifier 2003–NM–259–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400, –400D, and –400F Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 747–400, –400D, and –400F series airplanes. This proposed AD would require replacing at least one flap control unit (FCU) in the main equipment center with a new or modified FCU. This proposed AD is prompted by a report indicating that, after takeoff, an airplane was required to return to the airport because the autopilot disengaged. The report also indicated that, upon selecting flaps for landing, the flaps indication display did not indicate the flap setting, requiring the airplane to land in alternate flap mode. We are proposing this AD to prevent disconnection of autoland/autopilot functions and loss of primary flaps control and flaps indication display due to disengagement of all three FCUs at the same time, which could lead to a non-normal high speed landing with the flaps retracted, increased pilot workload, and possible runway departure at high speeds during landing.

DATES: We must receive comments on this proposed AD by October 22, 2004.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC 20590.
- By fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For the service information identified in this proposed AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401 on the plaza level of the Nassif Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Technical Information: Douglas Tsuji, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6487; fax (425) 917–6590.

Plain Language Information: Marcia Walters, *marcia.walters@faa.gov*.

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

The FAA has implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, new AD actions are posted on DMS and assigned a docket number. We track each action and assign a corresponding directorate identifier. The DMS AD docket number is in the form "Docket No. FAA–2004–99999." The Transport Airplane Directorate identifier is in the form "Directorate Identifier 2004–NM–999–AD." Each DMS AD docket also lists the directorate identifier ("Old Docket Number") as a cross-reference for searching purposes.

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include "Docket No. FAA–2004–18999; Directorate Identifier 2003–NM–259–AD" in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov*.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You can get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov*.

Examining the Docket

You can examine the AD docket in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

We have received a report indicating that, after takeoff, a Boeing Model 747–400 series airplane was required to return to the airport because the autopilot disengaged. The report also indicated that, upon selecting flaps for landing, the flaps indication display did not indicate the flap setting, requiring the airplane to land in alternate flap mode. The root cause of these conditions has been determined to be the susceptibility of the flap control units (FCUs) to certain external failures of the position switch circuit of the leading edge flap. These external failures can cause all three FCUs to disengage at the same time, which could result in disconnection of autoland/autopilot functions and loss of primary flaps control and flaps indication display. These conditions, if not corrected, could lead to a non-normal high speed landing with the flaps retracted, increased pilot workload, and possible runway departure at high speeds during landing.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 747–27A2386, dated March 13, 2003, which describes procedures for replacing FCUs having part number (P/N) 285U0011–207, located in the main equipment center, with new or modified FCUs having P/N 285U0011–208. The service bulletin specifies that at least one FCU per airplane must be replaced to prevent the malfunction of the primary flaps control and flaps indication display.

Boeing Alert Service Bulletin 747–27A2386 refers to Boeing Component Service Bulletin 285U0011–27–06, dated March 13, 2003, as an additional source of service information for modifying an FCU having P/N 285U0011–207 to P/N 285U0011–208.

Boeing Alert Service Bulletin 747–27A2386 also specifies prior or concurrent accomplishment of Boeing Service Bulletin 747–27–2319, dated January 24, 1991, which describes procedures for replacing FCUs having P/N 285U0011–205 or 285U0011–206, located in the main equipment center, with new or modified FCUs having P/N 285U0011–207.

Boeing Service Bulletin 747–27–2319 refers to Boeing Component Service Bulletin 285U0011–27–04, dated January 24, 1991, as an additional source of service information for modifying an FCU having P/N 285U0011–205 or 285U0011–206 to P/N 285U0011–207.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

Clarification of FCU Replacement Specified in Boeing Alert Service Bulletin

Although the Accomplishment Instructions of Boeing Alert Service Bulletin 747–27A2386 specify to "replace the FCUs as shown in Figure 1" (which illustrates replacement of three FCUs), only a minimum of one FCU for each airplane must be replaced as specified in paragraph 1.E., "Compliance," of the service bulletin. In paragraph 1.D., "Description," the service bulletin specifies that "a minimum of one FCU for each airplane must be replaced to prevent the malfunction of the primary flaps control and flaps indication display." Replacing a minimum of one FCU having P/N 285U0011–207 with P/N 285U0011–208 addresses the unsafe condition specified in the proposed AD.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. Therefore, we are proposing this AD, which would require replacing at least one FCU having P/N 285U0011–207, located in the main equipment center, with an FCU having P/N 285U0011–208. For certain

airplanes, the proposed AD would first require replacing the three FCUs having P/N 285U0011–205 or 285U0011–206 with FCUs having P/N 285U0011–207. The proposed AD would require you to use Boeing Alert Service Bulletin 747–27A2386, dated March 13, 2003; and Boeing Service Bulletin 747–27–2319, dated January 24, 1991; described previously to perform these actions.

Costs of Compliance

This proposed AD would affect about 614 airplanes worldwide and 87 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

Replacement	Work hours	Average labor rate per hour	Parts	Cost per airplane
Estimated Costs				
With new –208 FCU	2	$65	$78,550	$78,680
With modified –208 FCU	10	65	975	1,625
Estimated Concurrent Service Bulletin Costs				
With new –207 FCU	3	65	235,650	235,845
With modified –207 FCU	87	65	2,925	8,580

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2004–18999; Directorate Identifier 2003–NM–259–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by October 22, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model 747–400, –400D, and –400F series airplanes, as listed in Boeing Alert Service Bulletin 747–27A2386, dated March 13, 2003; certificated in any category.

Unsafe Condition

(d) This AD was prompted by a report indicating that, after takeoff, an airplane was required to return to the airport because the autopilot disengaged. The report also indicated that, upon selecting flaps for landing, the flaps indication display did not indicate the flap setting, requiring the airplane to land in alternate flap mode. We are issuing this AD to prevent disconnection of autoland/autopilot functions and loss of primary flaps control and flaps indication display due to disengagement of all three flap control units (FCUs) at the same time, which could lead to a non-normal high speed landing with the flaps retracted, increased pilot workload, and possible runway departure at high speeds during landing.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Replace FCU

(f) At the earliest of the times specified in paragraphs (f)(1), (f)(2), and (f)(3) of this AD: Replace at least one FCU having P/N 285U0011–207 with a new or modified FCU having P/N 285U0011–208 in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–27A2386, dated March 13, 2003.

(1) Within 60 months after the effective date of this AD.

(2) Within 25,000 flight hours after the effective date of this AD.

(3) Within 4,000 flight cycles after the effective date of this AD.

Note 1: Boeing Alert Service Bulletin 747–27A2386, dated March 13, 2003, refers to Boeing Component Service Bulletin 285U0011–27–06, dated March 13, 2003, as an additional source of service information for modifying an FCU having P/N 285U0011–207 to P/N 285U0011–208.

Actions Required Before or Concurrently With Paragraph (f)

(g) For airplanes listed in Boeing Service Bulletin 747–27–2319, dated January 24, 1991: Before or concurrent with the accomplishment of paragraph (f) of this AD, replace the three FCUs having P/N 285U0011–205 or 285U0011–206 with new or modified FCUs having P/N 285U0011–207 in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–27–2319, dated January 24, 1991.

Note 2: Boeing Service Bulletin 747–27–2319, dated January 24, 1991, refers to Boeing Component Service Bulletin 285U0011–27–04, dated January 24, 1991, as an additional source of service information for modifying

the FCUs having P/N 285U0011–205 or 285U0011–206 to P/N 285U0011–207.

Parts Installation

(h) As of the effective date of this AD, no person may install on any airplane an FCU having P/N 285U0011–205 or –206.

Alternative Methods of Compliance (AMOCs)

(i) The Manager, Seattle Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Issued in Renton, Washington, on August 25, 2004.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–20210 Filed 9–3–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19002; Directorate Identifier 2003–NM–27–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 and A300 B4 Series Airplanes; A300 B4–600, B4–600R, and F4–600R Series Airplanes; and Model C4–605R Variant F Airplanes (Collectively Called A300–600)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) for certain Airbus Model A300 B2 and A300 B4 series airplanes; A300 B4–600, B4–600R, and F4–600R series airplanes; and Model C4–605R Variant F airplanes (collectively called A300–600). That AD currently requires repetitive inspections to detect cracks in Gear Rib 5 of the main landing gear (MLG) attachment fittings at the lower flange, and repair, if necessary. That AD also requires modification of Gear Rib 5 of the MLG attachment fittings, which constitutes terminating action for the repetitive inspections. This proposed AD would reduce the compliance times for all inspections, and require that you do the inspections in accordance with new revisions of the service bulletins. This proposed AD is prompted by new service information that was issued by the manufacturer and mandated by the French airworthiness authority. We are proposing this AD to prevent fatigue cracking of the MLG attachment fittings, which could result in reduced structural integrity of the airplane.

DATES: We must receive comments on this proposed AD by October 7, 2004.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For the service information identified in this proposed AD, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

The FAA has implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, new AD actions are posted on DMS and assigned a docket number. We track each action and assign a corresponding directorate identifier. The DMS AD docket number is in the form "Docket No. FAA–2004–99999." The Transport Airplane Directorate identifier is in the form "Directorate Identifier 2004–NM–999–AD." Each DMS AD docket also lists the directorate identifier ("Old Docket Number") as a cross-reference for searching purposes.

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include "Docket No. FAA–2004–19002; Directorate Identifier 2003–NM–27–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of our docket web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov*.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You can get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov*.

Examining the Docket

You can examine the AD docket in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

On February 29, 2000, we issued AD 2000–05–07, amendment 39–11616 (65 FR 12077, March 8, 2000), for certain Airbus Model A300 and A300–600 series airplanes. That AD requires repetitive inspections to detect cracks in Gear Rib 5 of the main landing gear (MLG) attachment fittings at the lower flange, and repair, if necessary. That AD also requires modification of Gear Rib 5 of the MLG attachment fittings, which constitutes terminating action for the repetitive inspections. That AD was

prompted by issuance of mandatory continuing airworthiness information by the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France. We issued that AD to prevent fatigue cracking of the MLG attachment fittings, which could result in reduced structural integrity of the airplane.

Actions Since Existing AD Was Issued

Since we issued AD 2000–05–07, Airbus has new service information, which the DGAC mandated at reduced compliance times for all inspections.

Relevant Service Information

Airbus has issued the following service bulletins:

- Airbus Service Bulletin A300–57–6087, Revision 04, dated February 19, 2002; and Airbus Service Bulletin A300–57–0234, Revision 05, dated February 19, 2002. The procedures in these revisions are essentially the same as those in previous revisions of the service bulletin, which were referenced in the AD 2000–05–07 for accomplishment of the inspections. However, these new revisions change the compliance thresholds and inspection intervals. These revisions also contain certain corrections of airplane effectivity.
- Airbus Service Bulletin A300–57–6088, Revision 03, dated March 18, 2003; and Airbus Service Bulletin A300–57–0235, Revision 05, dated December 3, 2003. The procedures in these revisions are essentially the same as those in the previous revisions of the service bulletins, which were referenced in the existing AD for accomplishment of the modifications. These new revisions of the service bulletins add a statement for operators who require assistance with installing certain fasteners.

We have determined that accomplishment of the actions specified in the service information will adequately address the unsafe condition. The DGAC mandated the service information and issued French airworthiness directive 2003–318(B), dated August 30, 2003, to ensure the continued airworthiness of these airplanes in France.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. We have examined the DGAC's findings, evaluated all pertinent information, and determined that AD action is necessary for airplanes of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would supersede AD 2000–05–07 to continue to require repetitive inspections to detect cracks in Gear Rib 5 of the MLG attachment fittings at the lower flange, and repair, if necessary; and to continue to require modification of Gear Rib 5 of the MLG attachment fittings, which constitutes terminating action for the repetitive inspections. This proposed AD would also reduce the compliance threshold and repetitive intervals for the inspections in the same area. The proposed AD would require you to use the service information described previously to perform these actions, except as discussed under "Difference Between the Proposed AD and the French Airworthiness Directive," and "Differences Between the Proposed AD and the Service Information."

Difference Between the Proposed AD and the French Airworthiness Directive

The applicability of French airworthiness directive 2003–318(B) excludes airplanes that accomplished Airbus Service Bulletin A300–57–0235 or Airbus Service Bulletin A300–57–6088 in service. However, we have not excluded those airplanes in the applicability of this proposed AD; rather, this proposed AD includes a requirement to accomplish the actions specified in those service bulletins. Such a requirement would ensure that the actions specified in the service bulletin and required by this proposed AD are accomplished on all affected airplanes. Operators must continue to operate the airplane in the configuration required by this proposed AD unless an alternative method of compliance is approved.

Differences Between the Proposed AD and the Service Information

Although Airbus Service Bulletin A300–57–6088, Revision 03, specifies that the manufacturer may be contacted for disposition of certain repairs, this proposed AD would require the repair of those conditions to be accomplished in accordance with a method approved either by us or by the DGAC (or its delegated agent). In light of the type of repair that would be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, we have determined that a repair approved by either us or the DGAC (or its delegated agent) would be acceptable for compliance with this proposed AD.

Operators should note that, although the Accomplishment Instructions of the referenced service bulletins describe procedures for submitting certain information to the manufacturer, this proposed AD would not require those actions.

Clarification of Inspection Thresholds

The French airworthiness directive gives repetitive inspection thresholds based on the original issue date of that airworthiness directive. Due to some procedural differences in the way we express compliance times, the thresholds in paragraph (i) of this proposed AD are presented in a manner that differs from those in the French airworthiness directive. However, the compliance times capture the intent of the French airworthiness directive, and ensure that operators of all affected airplanes are given sufficient time to accomplish the inspections while still ensuring continued operational safety.

Changes to Existing AD

This proposed AD would retain all requirements of AD 2000–05–07. Since AD 2000–05–07 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this proposed AD as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 2000–05–07	Corresponding requirement in this proposed AD
paragraph (a)	paragraph (f).
paragraph (b)	paragraph (g).
paragraph (c)	paragraph (h).
paragraph (e)	paragraph (p).

We have changed all references to a "detailed visual inspection" in the existing AD to "detailed inspection" in this action.

We have revised the applicability of the existing AD to identify model designations as published in the most recent type certificate data sheet for the affected models.

In addition, we have reformatted the existing requirements in paragraph (f) of this proposed AD (paragraph (a) of AD 2000–05–07) to list service bulletin references in two tables. We included the tables for clarity because we added several service bulletin revisions to this paragraph.

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Modification (required by AD 2000–05–07)	62	$65	$10,270	$14,300	164	$2,345,200
Inspections (new proposed action)	6	65	None	390	164	63,960

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing amendment 39–11616 (65 FR 12077, March 8, 2000) and adding the following new airworthiness directive (AD):

Airbus: Docket No. FAA–2004–19002; Directorate Identifier 2003–NM–27–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by October 7, 2004.

Affected ADs

(b) This AD supersedes AD 2000–05–07, amendment 39–11616.

Applicability

(c) This AD applies to Model A300 B2 and A300 B4 series airplanes, as listed in Airbus Service Bulletin A300–57A0234, Revision 05, dated February 19, 2002; and Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model C4–605R Variant F airplanes (collectively called A300–600), as listed in Airbus Service Bulletin A300–75A6087, Revision 04, dated February 19, 2002; except airplanes on which Airbus Modification 11912 or 11932 has been installed; certificated in any category.

Unsafe Condition

(d) This AD was prompted by new service information that was issued by the manufacturer and mandated by the French airworthiness authority. We are issuing this AD to prevent fatigue cracking of the main landing gear (MLG) attachment fittings, which could result in reduced structural integrity of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Restatement of the Requirements of AD 2000–05–07

Repetitive Inspections

(f) Perform a detailed inspection and a high frequency eddy current (HFEC) inspection to detect cracks in Gear Rib 5 of the MLG attachment fittings at the lower flange, in accordance with the Accomplishment Instructions of any applicable service bulletin listed in Table 1 and Table 2 of this AD, at the time specified in paragraph (f)(1) or (f)(2) of this AD. After April 12, 2000 (the effective date of AD 2000–05–07, amendment 39–11616), only the service bulletins listed in Table 2 of this AD may be used. Repeat the inspections thereafter at intervals not to exceed 1,500 flight cycles, until paragraph (h), (i), or (k) of this AD is accomplished.

TABLE 1.—REVISION 01 OF SERVICE BULLETINS

Model	Service bulletin	Revision level	Date
A300–600	A300–57–6087	01	March 11, 1998.
A300 B2 and A300 B4	A300–57–0234	01	March 11, 1998.

TABLE 2.—FURTHER REVISIONS OF SERVICE BULLETINS

Model	Service bulletin	Revision level	Date
A300–600	A300–57A6087	02, including Appendix 01	June 24, 1999.
		03, including Appendix 01	May 19, 2000.
		04, including Appendix 01	February 19, 2002.

TABLE 2.—FURTHER REVISIONS OF SERVICE BULLETINS—Continued

Model	Service bulletin	Revision level	Date
A300 B2 and A300 B4	A300–57A0234	02	June 24, 1999.
		03, including Appendix 01	September 2, 1999.
		04, including Appendix 01	May 19, 2000.
		05, including Appendix 01	February 19, 2002.

(1) For airplanes that have accumulated 20,000 or more total flight cycles as of March 9, 1998 (the effective date of AD 98–03–06, amendment 39–10298): Inspect within 500 flight cycles after March 9, 1998.

(2) For airplanes that have accumulated less than 20,000 total flight cycles as of March 9, 1998: Inspect prior to the accumulation of 18,000 total flight cycles, or within 1,500 flight cycles after March 9, 1998, whichever occurs later.

Note 1: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Note 2: Accomplishment of the initial detailed and HFEC inspections in accordance with Airbus Service Bulletin A300–57A0234 or A300–57A6087, both dated August 1, 1997, as applicable, is considered acceptable for compliance with the initial inspections required by paragraph (f) of this AD.

Repair

(g) If any crack is detected during any inspection required by paragraph (f) of this AD, prior to further flight, accomplish the requirements of paragraphs (g)(1) or (g)(2) of this AD, as applicable.

(1) If a crack is detected at one hole only, and the crack does not extend out of the spotface of the hole, repair in accordance with the applicable service bulletin in Table 2 of this AD.

(2) If a crack is detected at more than one hole, or if any crack at any hole extends out of the spotface of the hole, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, or the Direction Générale de l'Aviation Civile (or its delegated agent).

Terminating Modification

(h) Prior to the accumulation of 21,000 total flight cycles, or within 2 years after October 20, 1999 (the effective date of AD 99–19–26, amendment 39–11313), whichever occurs later: Modify Gear Rib 5 of the MLG attachment fittings at the lower flange in accordance with the applicable service bulletin in Table 3 of this AD. After the effective date of this AD, only Revision 04 of Airbus Service Bulletin A300–57–6088, and Revisions 04 and 05 of Airbus Service Bulletin A300–57–0235 may be used. Accomplishment of this modification constitutes terminating action for the repetitive inspection requirements of this AD.

TABLE 3.—SERVICE BULLETINS FOR TERMINATING MODIFICATION

Model	Service bulletin	Revision level	Date
A300–600	A300–57–6088	01, including Appendix 01	February 1, 1999.
		04	December 3, 2003.
A300 B2 and A300 B4	A300–57–0235	01, including Appendix 01	February, 1, 1999.
		04	March 13, 2003.
		05	December 3, 2003.

Note 3: Accomplishment of the modification required by paragraph (h) of this AD prior to April 12, 2000 (the effective date of AD 2000–05–07), in accordance with Airbus Service Bulletin A300–57–6088 or A300–57–0235, both dated August 1, 1998; as applicable; is acceptable for compliance with the requirements of that paragraph.

New Requirements of This AD

Repetitive Inspections

(i) For airplanes on which the modification specified in paragraph (h) of this AD has not been done as of the effective date of this AD, perform a detailed and a HFEC inspection to detect cracks in Gear Rib 5 of the MLG attachment fittings at the lower flange, in accordance with the applicable service bulletin in Table 4 of this AD. Perform the inspections at the applicable time specified in paragraph (i)(1), (i)(2), (i)(3), or (i)(4) of this AD. Repeat the inspections thereafter at intervals not to exceed 700 flight cycles until the terminating modification required by paragraph (k) of this AD is accomplished. Accomplishment of the inspections per paragraph (i) of this AD, terminates the inspection requirements of paragraph (f) of this AD.

TABLE 4.—SERVICE BULLETINS FOR REPETITIVE INSPECTIONS

Model	Service bulletin	Revision level	Date
A300–600	A300–57–6087	04, including Appendix 01	February 19, 2002.
A300 B2 and A300 B4	A300–57–0234	05, including Appendix 01	February 19, 2002.

(1) For Models A300 B2 and A300 B4 series airplanes; A300 B4–600, B4–600R, and F4–600R series airplanes; and Model C4–605R Variant F airplanes (collectively called A300–600) that have accumulated 18,000 or more total flight cycles as of the effective date of this AD: Within 700 flight cycles after the effective date of this AD.

(2) For Model A300 B2 series airplanes that have accumulated less than 18,000 total flight cycles as of the effective date of this AD: Prior to the accumulation of 18,000 total flight cycles, or within 700 flight cycles after the effective date of this AD, whichever occurs later.

(3) For Model A300 B4 series airplanes that have accumulated less than 18,000 total flight cycles as of the effective date of this AD: Prior to the accumulation of 14,500 total flight cycles, or within 700 flight cycles after the effective date of this AD, whichever occurs later.

(4) For Model A300 B4–600, B4–600R, and F4–600R series airplanes; and Model C4–605R Variant F airplanes (collectively called A300–600) that have accumulated less than

18,000 total flight cycles as of the effective date of this AD: Prior to the accumulation of 11,600 total flight cycles, or within 700 flight cycles after the effective date of this AD, whichever occurs later.

Repair

(j) If any crack is detected during any inspection required by paragraph (i) of this AD, prior to further flight, accomplish the requirements of paragraph (j)(1) and (j)(2) of this AD, as applicable.

(1) If a crack is detected at only one hole, and the crack does not extend out of the spotface of the hole, repair in accordance with Airbus Service Bulletin A300–57A0234, Revision 05, including Appendix 01, dated February 19, 2002 (for Models A300 B2 and A300 B4); or A300–57A6087, Revision 04, including Appendix 01, dated February 19, 2002 (for Models A300–600); as applicable.

(2) If a crack is detected at more than one hole, or if any crack at any hole extends out of the spotface of the hole, repair in accordance with a method approved by the Manager, International Branch, ANM–116, or the DGAC (or its delegated agent).

Terminating Modification

(k) For airplanes on which the terminating modification in paragraph (h) of this AD has not been accomplished as of the effective date of this AD: At the earlier of the times specified in paragraphs (k)(1) and (k)(2) of this AD, modify Gear Rib 5 of the MLG attachment fittings at the lower flange. Except as provided by paragraph letter (l) of this AD, do the modification in accordance with the applicable service bulletin in Table 3 of this AD.

(1) Prior to the accumulation of 21,000 total flight cycles, or within 2 years after October 20, 1999, whichever is later.

(2) Within 15 months after the effective date of this AD.

(l) Where the applicable service bulletin in paragraph (k) of this AD specifies to contact Airbus for modification instructions: Prior to further flight, modify in accordance with a method approved by the Manager, International Branch, ANM–116, or the DGAC (or its delegated agent).

(m) For airplanes that were modified prior to the effective date of this AD in accordance with paragraph (h) of this AD, and on which repairs were made prior to the effective date of this AD per paragraph (g) of this AD, or on which cracks were found during the accomplishment of paragraph (h) of this AD: Within 15 months after the effective date of this AD, repair in accordance with a method approved by the Manager, International Branch, ANM–116, or the DGAC (or its delegated agent).

Actions Accomplished Per Previous Issues of the Service Bulletins

(n) Actions accomplished before the effective date of this AD per the service bulletins listed in Table 5 of this AD, are considered acceptable for compliance with the corresponding action specified in this AD.

TABLE 5.—PREVIOUS ISSUES OF SERVICE BULLETINS

Airbus service bulletin	Revision level	Date
A300–57–0235	02	September 27, 1999.
	03, including Appendix 01	September 5, 2002.
A300–57A6087	Original Issue	August 1, 1997.
A300–57–6088	02	September 5, 2000.
	03	March 13, 2003.

No Reporting Requirements

(o) Although the service bulletins A300–57A0234, A30057–0235, A300–57A6087, and A300–57–6088 specify to submit certain information to the manufacturer, this AD does not include such a requirement.

Alternative Methods of Compliance (AMOCs)

(p)(1) The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Alternative methods of compliance, approved previously per AD 2000–05–07, amendment 39–11616, are approved as alternative methods of compliance with this AD.

Related Information

(q) French airworthiness directive 2003–318(B), dated August 20, 2003, also addresses the subject of this AD.

Issued in Renton, Washington, on August 26, 2004.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–20211 Filed 9–3–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[REG–101282–04]

RIN 1545–BD06

Treatment of a Stapled Foreign Corporation Under Sections 269B and 367(b)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains a notice of proposed rulemaking concerning the definition and tax treatment of a stapled foreign corporation, which generally is treated for tax purposes as a domestic corporation under section 269B of the Internal Revenue Code.

DATES: Written or electronic comments must be received by December 6, 2004. Outlines of topics to be discussed at the public hearing scheduled for December 15, 2004, at 10 a.m. must be received by December 6, 2004.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG–101282–04), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–101282–04), Courier's desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224. Alternatively, taxpayers may submit comments electronically to the IRS Internet site at *http://www.irs.gov/regs* or via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS–REG–101282–04). The public hearing will be held in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Richard L. Osborne, (202) 622–3977, or Bethany Ingwalson, (202) 622–3850; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, LaNita Van Dyke, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Under section 269B(a)(1), if a domestic corporation and a foreign corporation are stapled entities, the foreign corporation will be treated as a domestic corporation for U.S. Federal tax purposes, unless otherwise provided in regulations. A domestic and a foreign

corporation are stapled entities if more than 50 percent in value of the beneficial ownership in each corporation consists of stapled interests. Section 269B(c)(2). Interests are stapled if, by reason of form of ownership, restrictions on transfer, or other terms and conditions, in connection with the transfer of one of such interests, the other such interests are also transferred or required to be transferred. Section 269B(c)(3).

Section 269B(e) provides that a stapled foreign corporation will not be treated as a domestic corporation pursuant to section 269B(a)(1) if it is established to the satisfaction of the Secretary that the stapled corporations are foreign owned. A corporation is treated as foreign owned if U.S. persons own directly (or indirectly through applying paragraphs (2) and (3) of section 958(a) and paragraph (4) of section 318(a)) less than 50 percent of the total combined voting power of all classes of stock entitled to vote and less than 50 percent of the total value of the stock of such corporation.

On August 28, 1989, the IRS and the Treasury Department issued Notice 89–94 (1989–2 C.B. 416), announcing the intention to adopt regulations under section 269B. The Notice stated that regulations would provide that a stapled foreign corporation treated as a domestic corporation under section 269B(a)(1) was nevertheless to be treated as a foreign corporation for purposes of the definition of an includible corporation under section 1504(b). Notice 89–94 explained that, under these regulations, the stapled foreign corporation's losses would not offset the income of any member of the affiliated group unless a valid section 1504(d) election was in effect for the stapled foreign corporation.

Subsequent to the issuance of Notice 89–94, the IRS and Treasury Department became aware of instances in which taxpayers attempted to use section 269B and Notice 89–94 to manipulate the computation of their foreign tax credit limitation. These transactions typically involved stapling the interests of a domestic and foreign corporation, all or substantially all of the interests of which were held by the same person or related persons. On July 22, 2003, the IRS and Treasury Department issued Notice 2003–50 (2003–32 I.R.B. 295) to address these situations. Notice 2003–50 announced that regulations would be issued under section 269B providing that a stapled foreign corporation will be treated as a domestic corporation in determining whether it is an includible corporation for purposes of §§ 1.904(i)–1 and 1.861–11T(d)(6).

Explanation of Provisions

Includible Corporation

Consistent with Notice 89–94, this proposed regulation provides that a stapled foreign corporation, which is generally treated as a domestic corporation under section 269B, nevertheless will be treated as a foreign corporation for purposes of the definition of an includible corporation under section 1504(b). Thus, in the absence of a valid election under section 1504(d), an affiliated group cannot include the stapled foreign corporation in its consolidated tax return and therefore the affiliated group cannot use the stapled foreign corporation's losses to offset income of another member of the group. As announced in Notice 2003–50, however, the proposed regulation also treats a stapled foreign corporation as a domestic corporation in determining whether it is an includible corporation for purposes of §§ 1.904(i)–1 and 1.861–11T(d)(6).

Determination of Stapled Corporation Status in the Case of Multiple Classes of Stock

Section 269B(c)(2) provides that two or more entities are stapled entities if more than 50 percent in value of the beneficial ownership in each entity consists of stapled interests. This proposed regulation clarifies that this determination is made on an aggregate basis if there are multiple classes of stock. For example, if a class of stock in each corporation (representing more than 50 percent in value of such corporation) is stapled to a class of stock in the other corporation (representing less than 50 percent in value of such other corporation), the two corporations are considered stapled because, in the aggregate, more than 50 percent of the value of each corporation is stapled to the other corporation's stock.

Related Party Ownership Rule

In cases where stapled interests constituting more than 50 percent of the beneficial ownership in each stapled entity are held by the same or related persons, the IRS and Treasury Department believe that the formal transfer restrictions have little or no substantive consequence and may be intended to facilitate the affirmative use of section 269B for tax avoidance purposes. Accordingly, for purposes of determining whether a foreign corporation and a domestic corporation are stapled entities under section 269B, this proposed regulation permits the Commissioner to treat interests that otherwise would be stapled interests as not being stapled if the same person or related persons (within the meaning of section 267(b) or 707(b)) hold stapled interests constituting more than 50 percent of the beneficial ownership of both corporations, and a principal purpose of the stapling of those interests is the avoidance of U.S. income tax. No inference is intended as to whether current structures involving majority interests held by the same person or related persons are stapled interests within the meaning of section 269B. In such cases, the IRS will continue to apply principles of existing law to determine whether interests are stapled for purposes of section 269B. For example, under a substance-over-form analysis, restrictions on the transferability of ownership interests may be disregarded for tax purposes if the majority interests are held by the same person or related persons.

Inbound and Outbound Conversions

A corporation's status as either foreign or domestic may change under section 269B. For example, if a foreign corporation and a domestic corporation become stapled entities and are not foreign owned under section 269B(e), the foreign corporation will be treated as converting to a domestic corporation for U.S. tax purposes (inbound conversion). Similarly, if the stapled foreign corporation's interests cease to be stapled at some point in the future, the stapled foreign corporation no longer will be treated as a domestic corporation for U.S. tax purposes and, therefore, will be treated as converting to a foreign corporation (outbound conversion).

Section 1.367(b)–2(g) provides that an inbound conversion is treated as a reorganization described in section 368(a)(1)(F) (F reorganization). This proposed regulation includes this rule and revises § 1.367(b)–2(g) to include a cross-reference to the relocated provision. Additionally, this proposed regulation provides that an outbound conversion also is treated as an F reorganization. Treatment of an inbound or outbound conversion as an F reorganization also applies in cases where the conversion results from a change in ownership of a stapled foreign corporation that changes its status as foreign owned under section 269B(e). In all such cases, this proposed regulation treats the conversion as an F reorganization, even though all of the technical requirements of an F reorganization may not be satisfied. See Staff of Joint Committee on Taxation, General Explanation of the Revenue Provisions of the Deficit Reduction Act of 1984, H.R. Doc. 4170, 98th Cong., 456–57 (1984).

This proposed regulation references the section 367 regulations for purposes of determining the tax consequences under section 367 that result from an inbound or outbound conversion. Section 1.367(b)–2(f)(2) provides that an inbound F reorganization includes a transfer of assets by a foreign corporation to a domestic corporation. Section 1.367(a)–1T(f) provides similar treatment in the case of an outbound conversion. Further, in both cases, the taxable year of the corporation ends as a result of the deemed conversion. See §§ 1.367(a)–1T(e) and 1.367(b)–2(f)(4).

U.S. Treaties

Section 269B(d) provides that a stapled foreign corporation treated as a domestic corporation under section 269B will not be exempt from U.S. tax liability by reason of any treaty obligation of the United States. In enacting section 269B(d), Congress was concerned that a stapled foreign corporation that is resident in a treaty country might claim an exclusion from U.S. taxation, for example, on the basis that its income is not attributable to a permanent establishment in the United States. See H.R. Rep. No. 98–432, 98th Cong., 1st Sess., 244–45. This would be contrary to the purpose of section 269B, which is to tax a stapled foreign corporation on its worldwide income as if it were a domestic corporation. Accordingly, this proposed regulation provides that a stapled foreign corporation treated as a domestic corporation under section 269B may not claim an exemption or reduction in tax rates provided under a treaty entered into by the United States.

Collection

Under section 269B(b), the Secretary may prescribe regulations providing that any U.S. income tax imposed on a stapled foreign corporation may, if not paid by such corporation, be collected from the domestic corporation whose ownership interests are stapled to the foreign corporation's ownership interests (stapled domestic corporation) or from the shareholders of the stapled foreign corporation. This proposed regulation provides that the Commissioner may collect the stapled foreign corporation's U.S. income tax liability from the stapled domestic corporation and, subject to certain limitations, from certain shareholders of such foreign corporation.

Any U.S. income tax assessed as a tax liability of the stapled foreign corporation will be deemed to be properly assessed as a tax liability of the stapled domestic corporation and the 10-percent shareholders of the stapled foreign corporation. For these purposes, a 10-percent shareholder of a stapled foreign corporation is defined as any person owning directly 10 percent or more of the total value or total combined voting power of all classes of stock in the stapled foreign corporation for any day of the foreign corporation's taxable year with respect to which the liability relates. The IRS and Treasury Department are concerned about 10-percent shareholders interposing entities in order to avoid collection under these rules. These proposed regulations contain a reserved section for rules regarding indirect ownership and request comments on how to address situations involving indirect ownership of the stapled foreign corporation.

The Commissioner may collect from the stapled domestic corporation any U.S. income tax properly assessed but not timely paid by the stapled foreign corporation, and, if the domestic corporation fails to timely pay such tax or any portion thereof, from one or more 10-percent shareholders of the stapled foreign corporation. The collection action may proceed against the domestic corporation only after the Commissioner has issued a notice and demand for payment of unpaid U.S. income tax to the stapled foreign corporation, and the stapled foreign corporation has failed to pay the tax due by the date specified in the notice. A collection action then may proceed against the 10-percent shareholders of the stapled foreign corporation if the Commissioner has issued a notice and demand for payment of the unpaid tax to the stapled domestic corporation, and the stapled domestic corporation has failed to pay such tax by the date specified.

This proposed regulation limits the amount of any U.S. income tax liability of the stapled foreign corporation that may be collected from any 10-percent shareholder of a stapled foreign corporation. The shareholder's share of the liability will be determined by assigning an equal portion of the total U.S. income tax liability of the stapled foreign corporation to each day in such corporation's taxable year, and then dividing that portion ratably among the shares outstanding for that day based on the relative values of such shares. The shareholder's share of the liability is the sum of the U.S. income tax liability allocated to the shares held by such shareholder for each day in the taxable year.

Proposed Effective Dates

Except as otherwise provided, the proposed regulations are applicable for taxable years that begin after the date on which final regulations are published in the **Federal Register**. Section 1.269B–1(d)(1) and (f) (except in the case of the collection of tax from a 10-percent shareholder that is a foreign person) applies beginning on July 18, 1984, for any foreign corporation that became stapled to a domestic corporation after June 30, 1983, and beginning on January 1, 1987, for any foreign corporation that was stapled to a domestic corporation as of June 30, 1983. Section 1.269B–1(d)(2) applies for taxable years beginning after July 22, 2003, except that in the case of a foreign corporation that becomes stapled to a domestic corporation on or after July 22, 2003, then paragraph (d)(2) applies to taxable years ending on or after July 22, 2003. Section 1.269B–1(e) applies beginning on July 18, 1984, except that § 1.269B–1(e) does not apply, and the foreign corporation continues for all U.S. tax purposes to be a foreign entity, if the foreign corporation was stapled to a domestic corporation as of June 30, 1983, was entitled to benefits under an income tax treaty in existence as of that date, and has remained eligible to claim such treaty benefits. At such time as the stapled foreign corporation is no longer eligible to claim treaty benefits, the foreign corporation is deemed to convert to a domestic corporation for U.S. tax purposes.

Special Analyses

The IRS and the Treasury Department have determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and that because this regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this regulation will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The Treasury Department and the IRS specifically request comments on the clarity of the proposed regulations and how it may be made easier to

understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for December 15, 2004, at 10 a.m., in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by December 6, 2004. A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these regulations are Richard L. Osborne and Bethany Ingwalson, of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting, and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.269B(b)–1 also issued under 26 U.S.C. 269B(b).

Par. 2. Section 1.269B–1 is added to read as follows:

§ 1.269B–1 Stapled foreign corporations.

(a) *Treatment as a domestic corporation*—(1) *General rule.* Except as otherwise provided, if a foreign corporation is a stapled foreign corporation within the meaning of paragraph (b)(1) of this section, such foreign corporation will be treated as a domestic corporation for U.S. Federal income tax purposes. Accordingly, for example, the worldwide income of such corporation will be subject to the tax imposed by section 11. For application of the branch profits tax under section 884, and application of sections 871(a), 881, 1441, and 1442 to dividends and interest paid by a stapled foreign corporation, see §§ 1.884–1(h) and 1.884–4(d).

(2) *Foreign owned exception.* Paragraph (a)(1) of this section will not apply if a foreign corporation and a domestic corporation are stapled entities (as provided in paragraph (b) of this section) and such foreign and domestic corporations are foreign owned within the meaning of this paragraph (a)(2). A corporation will be treated as foreign owned if it is established to the satisfaction of the Commissioner that United States persons hold directly (or indirectly applying section 958(a)(2) and (3) and section 318(a)(4)) less than 50 percent of the total combined voting power of all classes of stock entitled to vote and less than 50 percent of the total value of the stock of such corporation. For the consequences of a stapled foreign corporation becoming or ceasing to be foreign owned, therefore converting its status as either a foreign or domestic corporation within the meaning of this paragraph (a)(2), see paragraph (c) of this section.

(b) *Definition of a stapled foreign corporation*—(1) *General rule.* A foreign corporation is a stapled foreign corporation if such foreign corporation and a domestic corporation are stapled entities. A foreign corporation and a domestic corporation are stapled entities if more than 50 percent of the aggregate value of each corporation's beneficial ownership consists of interests that are stapled. In the case of corporations with more than one class of stock, it is not necessary for a class of stock representing more than 50 percent of the beneficial ownership of the foreign corporation to be stapled to a class of stock representing more than 50 percent of the beneficial ownership of the domestic corporation, provided that more than 50 percent of the aggregate value of each corporation's beneficial ownership (taking into account all classes of stock) are in fact stapled. Interests are stapled if a transferor of one or more interests in one entity is required, by form of ownership, restrictions on transfer, or other terms or conditions, to transfer interests in the other entity: The determination of whether interests are stapled for this purpose is based on the relevant facts and circumstances, including, but not limited to, the corporations' by-laws, articles of incorporation or association, and stock certificates, shareholder agreements, agreements between the corporations, and voting trusts with respect to the corporations. For the consequences of a foreign corporation's change in status as a stapled foreign corporation (that is not foreign owned) under this paragraph (b)(1), see paragraph (c) of this section.

(2) *Related party ownership rule.* For purposes of determining whether a foreign corporation is a stapled foreign corporation, the Commissioner may, at his discretion, treat interests that otherwise would be stapled interests as not being stapled if the same person or related persons (within the meaning of section 267(b) or 707(b)) hold stapled interests constituting more than 50 percent of the beneficial ownership of both corporations, and a principal purpose of the stapling of those interests is the avoidance of U.S. income tax. A stapling of interests may have a principal purpose of tax avoidance even though the tax avoidance purpose is outweighed by other purposes when taken together.

(3) *Example.* The principles of paragraph (b)(1) of this section are illustrated by the following example:

Example. USCo, a domestic corporation, and FCo, a foreign corporation, are publicly traded companies, each having two classes of stock outstanding. USCo's class A shares, which constitute 75% of the value of all beneficial ownership in USCo, are stapled to FCo's class B shares, which constitute 25% of the value of all beneficial ownership in F Co. USCo's class B shares, which constitute 25% of the value of all beneficial ownership in USCo, are stapled to FCo class A shares, which constitute 75% of the value of all beneficial ownership in FCo. Because more than 50% of the aggregate value of the stock of each corporation is stapled to the stock of the other corporation, USCo and FCo are stapled entities within the meaning of section 269B(c)(2).

(c) *Changes in domestic or foreign status.* The deemed conversion of a foreign corporation to a domestic corporation under section 269B is treated as a reorganization under section 368(a)(1)(F). Similarly, the deemed conversion of a corporation that is treated as a domestic corporation under

section 269B to a foreign corporation is treated as a reorganization under section 368(a)(1)(F). For the consequences of a deemed conversion, including the closing of a corporation's taxable year, see §§ 1.367(a)–1T(e), (f) and 1.367(b)–2(f).

(d) *Includible corporation*—(1) Except as provided in paragraph (d)(2) of this section, a stapled foreign corporation treated as a domestic corporation under section 269B nonetheless will be treated as a foreign corporation in determining whether it is an includible corporation within the meaning of section 1504(b). Thus, for example, a stapled foreign corporation shall not be eligible to join in the filing of a consolidated return under section 1501, and a dividend paid by such corporation shall not constitute a qualifying dividend under section 243(b), unless a valid section 1504(d) election is made with respect to such corporation.

(2) A stapled foreign corporation will be treated as a domestic corporation in determining whether it is an includible corporation under section 1504(b) for purposes of applying §§ 1.904(i)–1 and 1.861–11T(d)(6).

(e) *U.S. treaties*—(1) A stapled foreign corporation that is treated as a domestic corporation under section 269B may not claim an exemption from U.S. income tax or a reduction in U.S. tax rates by reason of any treaty entered into by the United States.

(2) The principles of this paragraph (e) are illustrated by the following example:

Example. FCo, a Country X corporation, is a stapled foreign corporation that is treated as a domestic corporation under section 269B. FCo qualifies as a resident of Country X pursuant to the income tax treaty between the United States and Country X. Under such treaty, the United States is permitted to tax business profits of a Country X resident only to the extent that the business profits are attributable to a permanent establishment of the Country X resident in the United States. While FCo earns income from sources within and without the United States, it does not have a permanent establishment in the United States within the meaning of the relevant treaty. Under paragraph (e)(1) of this section, however, FCo is subject to U.S. Federal income tax on its income as a domestic corporation without regard to the provisions of the U.S.-Country X treaty and therefore without regard to the fact that FCo has no permanent establishment in the United States.

(f) *Tax assessment and collection procedures*—(1) *In general.* (i) Any income tax imposed on a stapled foreign corporation by reason of its treatment as a domestic corporation under section 269B (whether such income tax is shown on the stapled foreign corporation's U.S. Federal income tax return or determined as a deficiency in income tax) shall be assessed as the income tax liability of such stapled foreign corporation.

(ii) Any income tax assessed as a liability of a stapled foreign corporation under paragraph (f)(1)(i) of this section shall be considered as having been properly assessed as an income tax liability of the stapled domestic corporation (as defined in paragraph (f)(4)(i) of this section) and all 10-percent shareholders of the stapled foreign corporation (as defined in paragraph (f)(4)(ii) of this section). The date of such deemed assessment shall be the date the income tax liability of the stapled foreign corporation was properly assessed. The Commissioner may collect such income tax from the stapled domestic corporation under the circumstances set forth in paragraph (f)(2) of this section and may collect such income tax from any 10-percent shareholders of the stapled foreign corporation under the circumstances set forth in paragraph (f)(3) of this section.

(2) *Collection from domestic stapled corporation.* If the stapled foreign corporation does not pay its income tax liability that was properly assessed, the unpaid balance of such income tax or any portion thereof may be collected from the stapled domestic corporation, provided that the following conditions are satisfied:

(i) The Commissioner has issued a notice and demand for payment of such income tax to the stapled foreign corporation in accordance with § 301.6303–1;

(ii) The stapled foreign corporation has failed to pay the income tax by the date specified in such notice and demand;

(iii) The Commissioner has issued a notice and demand for payment of the unpaid portion of such income tax to the stapled domestic corporation in accordance with § 301.6303–1.

(3) *Collection from 10-percent shareholders of the stapled foreign corporation.* The unpaid balance of the stapled foreign corporation's income tax liability may be collected from a 10-percent shareholder of the stapled foreign corporation, limited to each such shareholder's income tax liability as determined under paragraph (f)(4)(iv) of this section, provided the following conditions are satisfied:

(i) The Commissioner has issued a notice and demand to the stapled domestic corporation for the unpaid portion of the stapled foreign corporation's income tax liability, as provided in paragraph (f)(2)(iii) of this section;

(ii) The stapled domestic corporation has failed to pay the income tax by the date specified in such notice and demand;

(iii) The Commissioner has issued a notice and demand for payment of the unpaid portion of such income tax to such 10-percent shareholder of the stapled foreign corporation in accordance with § 301.6303–1.

(4) *Special rules and definitions.* For purposes of this paragraph (f), the following rules and definitions apply:

(i) *Stapled domestic corporation.* A domestic corporation is a *stapled domestic corporation* with respect to a stapled foreign corporation if such domestic corporation and the stapled foreign corporation are stapled entities as described in paragraph (b)(1) of this section.

(ii) *10-percent shareholder.* A *10-percent shareholder* of a stapled foreign corporation is any person that owned directly 10 percent or more of the total value or total combined voting power of all classes of stock in the stapled foreign corporation for any day of the stapled foreign corporation's taxable year with respect to which the income tax liability relates.

(iii) *10-percent shareholder in the case of indirect ownership of stapled foreign corporation stock.* [Reserved].

(iv) *Determination of a 10-percent shareholder's income tax liability.* The income tax liability of a 10-percent shareholder of a stapled foreign corporation, for the income tax of the stapled foreign corporation under section 269B and this section, is determined by assigning an equal portion of the total income tax liability of the stapled foreign corporation for the taxable year to each day in such corporation's taxable year, and then dividing that portion ratably among the shares outstanding for that day on the basis of the relative values of such shares. The liability of any 10-percent shareholder for this purpose is the sum of the income tax liability allocated to the shares held by such shareholder for each day in the taxable year.

(v) *Income tax.* The term *income tax* means any income tax liability imposed on a domestic corporation under title 26 of the United States Code, including additions to tax, additional amounts, penalties, and interest related to such income tax liability.

(g) *Effective dates*—(1) Except as provided in this paragraph (g), the provisions of this section are applicable for taxable years that begin after the date the final regulations are published in the **Federal Register**.

(2) Paragraphs (d)(1) and (f) of this section (except as applied to the

collection of tax from any 10-percent shareholder of a stapled foreign corporation that is a foreign person) are applicable beginning on—

(i) July 18, 1984, for any foreign corporation that became stapled to a domestic corporation after June 30, 1983; and

(ii) January 1, 1987, for any foreign corporation that was stapled to a domestic corporation as of June 30, 1983.

(3) Paragraph (d)(2) of this section is applicable for taxable years beginning after July 22, 2003, except that in the case of a foreign corporation that becomes stapled to a domestic corporation on or after July 22, 2003, paragraph (d)(2) of this section applies for taxable years ending on or after July 22, 2003.

(4) Paragraph (e) of this section is applicable beginning on July 18, 1984, except as provided in paragraph (g)(5) of this section.

(5) In the case of a foreign corporation that was stapled to a domestic corporation as of June 30, 1983, which was entitled to claim benefits under an income tax treaty as of that date, and which remains eligible for such treaty benefits, paragraph (e) of this section will not apply to such foreign corporation and for all purposes of the Code such corporation will continue to be treated as a foreign entity. The prior sentence will continue to apply even if such treaty is subsequently modified by protocol, or superseded by a new treaty, so long as the stapled foreign corporation continues to be eligible to claim such treaty benefits. If the treaty benefits to which the stapled foreign corporation was entitled as of June 30, 1983 are terminated, then a deemed conversion of the foreign corporation to a domestic corporation shall occur pursuant to paragraph (c) of this section as of the date of such termination.

Par. 3. In § 1.367(b)–2, paragraph (g) is revised to read as follows:

§ 1.367(b)–2 Definitions and special rules.

* * * * *

(g) Stapled stock under section 269B. For rules addressing the deemed conversion of a foreign corporation to a domestic corporation under section 269B, see § 1.269B–1(c).

* * * * *

PART 301—PROCEDURE AND ADMINISTRATION

Par 4. The authority citation for part 301 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

Section 301.269B–1 also issued under 26 U.S.C. 269B(b).

Par. 5. Section 301.269B–1 is added to read as follows:

§ 301.269B–1 Stapled foreign corporations.

In accordance with section 269B(a)(1), a stapled foreign corporation is subject to the same taxes that apply to a domestic corporation under Title 26 of the Internal Revenue Code. For provisions concerning taxes other than income for which the stapled foreign corporation is liable, apply the same rules as set forth in § 1.269B–1(a) through (f)(1)(i), and (g), except that references to *income tax* shall be replaced with the term *tax*. In addition, for purposes of collecting those taxes solely from the stapled foreign corporation, the term *tax* means any tax liability imposed on a domestic corporation under Title 26, including additions to tax, additional amounts, penalties, and interest related to that tax liability.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 04–20244 Filed 9–3–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AD29

Special Regulations; Areas of the National Park System

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service is proposing this rule to more effectively manage winter visitation and recreational use in Yellowstone and Grand Teton National Parks and the John D. Rockefeller, Jr., Memorial Parkway for up to three winter seasons (*i.e.*, through the winter of 2006–2007). This proposed rule is issued in conjunction with the Temporary Winter Use Plans Environmental Assessment (EA) and will ensure that visitors to the parks have an appropriate range of winter recreational opportunities for an interim period. In addition, the proposed rule will ensure that these recreational activities are in an appropriate setting and that they do not impair or irreparably harm park resources or values. The proposed rule is also necessary to allow time to collect additional monitoring data on strictly limited snowmobile and snowcoach use. The proposal provides a structure for winter use management in the parks for an interim period and is intended to reduce confusion and uncertainty among the public and local communities about winter use. These temporary regulations would continue to require that recreational snowmobiles and snowcoaches operating in the parks meet certain air and sound restrictions, snowmobilers be accompanied by a commercial guide, and proposes new daily entry limits on the numbers of snowmobiles that may enter the parks. Traveling off designated oversnow routes will remain prohibited.

DATES: Comments must be received by October 7, 2004.

ADDRESSES: Comments may be sent to Yellowstone National Park, Winter Use Proposed Rule, P.O. Box 168, Yellowstone NP, WY 82190. Comments may also be submitted online at *http://www.nps.gov/yell/winteruse-ea.*

FOR FURTHER INFORMATION CONTACT: John Sacklin, Planning Office, Yellowstone National Park, 307–344–2019 or at the address listed in the **ADDRESSES** section.

SUPPLEMENTARY INFORMATION: The National Park Service (NPS) has been managing winter use issues in Yellowstone National Park (YNP), Grand Teton National Park (GTNP), and the John D. Rockefeller, Jr., Memorial Parkway (the Parkway) for several decades. In 1997 the Fund for Animals and others filed suit, alleging violations of non-compliance with the National Environmental Policy Act (NEPA), among other laws. The suit resulted in a settlement agreement in October 1997 which, among other things, required the NPS to prepare a new winter use plan for the three park units. On October 10, 2000, a Winter Use Plans Final Environmental Impact Statement (FEIS) was published for YNP, GTNP, and the Parkway. A Record of Decision (ROD) was signed by the Intermountain Regional Director on November 22, 2000, and subsequently distributed to interested and affected parties. The ROD selected FEIS Alternative G, which eliminated both snowmobile and snowplane use from the parks by the winter of 2003–2004, and provided access via an NPS-managed, mass-transit snowcoach system. This decision was based on a finding that the snowmobile and snowplane use existing at that time, and the snowmobile use analyzed in the FEIS alternatives, impaired park resources and values, thus violating the statutory mandate of the NPS.

Implementing aspects of this decision required a special regulation for each park unit in question. Following publication of a proposed rule and the subsequent public comment period, a final rule was published in the **Federal Register** on January 22, 2001 (66 FR 7260). The rule became effective on April 22, 2001.

On December 6, 2000, the Secretary of the Interior, the Director of the National Park Service and others in the Department of the Interior and the NPS were named as defendants in a lawsuit brought by the International Snowmobile Manufacturers' Association (ISMA) and several groups and individuals. The States of Wyoming and Montana subsequently intervened on behalf of the plaintiffs. Following promulgation of final regulations, the original complaint was amended to also challenge the regulations. The lawsuit asked for the decision, as reflected in the ROD, to be set aside. The lawsuit alleged among other things, violation of NEPA. A procedural settlement was reached on June 29, 2001, under which, NPS agreed to prepare a Supplemental Environmental Impact Statement (SEIS) incorporating "any significant new or additional information or data submitted with respect to a winter use plan." Additionally, the NPS provided the opportunity for additional public participation in furtherance of the purposes of NEPA. A Notice of Intent to prepare a Supplemental Environmental Impact Statement was published in the **Federal Register** on July 27, 2001 (66 FR 39197).

A draft SEIS was published on March 29, 2002, and distributed to interested and affected parties. NPS accepted public comments on the draft for 60 days, and 357,405 pieces of correspondence were received. The draft SEIS examined four additional alternatives: two alternatives to allow some form of snowmobile access to continue, a no-action alternative that would implement the November 2000 ROD, and another alternative that would implement the no-action alternative one year later to allow additional time for phasing in snowcoach-only travel. The SEIS focused its analysis only on the issues relevant to allowing recreational snowmobile and snowcoach use in the parks. These impact topics included air quality and air quality related values, employee health and safety, natural soundscapes, public health and safety, socioeconomics, wildlife (bison and elk), and visitor experience. The SEIS did not re-evaluate the decision to ban snowplane use on Jackson Lake because this had not been an issue in the lawsuit, and was not an aspect of the resulting settlement.

On November 18, 2002, the NPS published a final rule (67 FR 69473) ("delay rule") based on the FEIS, which generally postponed implementation of the phase-out of snowmobiles in the parks for one year. This rule allowed for additional time to plan and implement the NPS-managed mass-transit, snowcoach-only system outlined in the FEIS as well as time for completion of the SEIS. The rule delayed the implementation of the daily entry limits on snowmobiles until the winter of 2003–2004 and the complete prohibition on snowmobiles until 2004–2005. The 2001 regulation's transitional requirement that snowmobile parties use an NPS-permitted guide was also delayed until the 2003–2004 winter use season.

Other provisions under the January 2001 regulation concerning licensing requirements, limits on hours of operation, Yellowstone side road use and the ban on snowplane use remained effective for the winter use season of 2002–2003.

The Notice of Availability for the final SEIS was published on February 24, 2003 (68 FR 8618). The final SEIS included a new alternative, alternative 4, consisting of elements which fell within the scope of the analyses contained in the Draft SEIS and which was identified as the preferred alternative. In addition, the final SEIS included changes to the alternatives, included changes in modeling assumptions and analysis, and incorporated additional new information. The Intermountain Regional Director signed a Record of Decision for the SEIS, which became effective on March 25, 2003. The ROD selected final SEIS alternative 4 for implementation, and enumerated additional modifications to that alternative. The final SEIS and ROD found that implementation of final SEIS alternatives 1a, 1b, 3, or 4 would not be likely to impair park resources or values due to motorized oversnow recreation. On December 11, 2003, the new regulation governing winter use in the parks was published.

On December 16, 2003, the U.S. District Court for the District of Columbia, ruling on lawsuits by the Fund for Animals, *et al.*, and the Greater Yellowstone Coalition, *et al.*, overturned the December 11, 2003, regulation and SEIS. The court reinstated the January 22, 2001, regulation phasing out recreational snowmobiling pursuant to the delay rule. Specifically, up to 493 snowmobiles a day were to be allowed into Yellowstone for the 2003–2004 season, and another 50 in Grand Teton and the Parkway combined. All snowmobiles in Yellowstone were required to be led by a commercial guide. Snowmobiles were to be phased out entirely from the parks in the 2004–2005 season.

ISMA and the State of Wyoming reopened their December 2000 lawsuit against the Department of the Interior and the NPS. Ruling upon the reopened suit on February 10, 2004, the U.S. District Court for the District of Wyoming issued a preliminary injunction preventing the NPS from continuing to implement the snowmobile phase-out. The court also directed the superintendents of Yellowstone and Grand Teton to issue emergency orders that were "fair and equitable" to all parties to allow visitation to continue for the remainder of the winter season. Under the authority of 36 CFR 1.5, the superintendents authorized up to 780 snowmobiles a day into Yellowstone, and up to 140 into Grand Teton and the Parkway combined. In Yellowstone, the requirement that all snowmobilers travel with a commercial guide remained in effect.

Judicial proceedings are continuing in both the Wyoming and Washington, DC, courts.

Park Resource Issues

The supporting EA focuses on analyzing the environmental impacts of five alternatives for interim winter use. The alternatives are not dramatically different from those considered in the SEIS or the EIS; thus, the EA incorporates and references these documents as appropriate. The major issues analyzed in the EA include social and economic issues, human health and safety, wildlife impacts, air quality impacts, natural soundscape, visitor use and access, and visitor experience. These impacts are detailed in the EA and are available online at: *http://www.nps.gov/yell/winteruse-ea.* Additional information is available in the SEIS and FEIS, available online at: *http://www.nps.gov/grte/winteruse/intro.htm* and *http://www.nps.gov/yell/technical/planning/winteruse/plan/index.htm*, respectively.

Impairment to Park Resources and Values

In addition to determining the environmental consequences of the alternatives, NPS policy (NPS 2000a) requires analysis of potential effects to determine whether actions would impair park resources. In managing National Park System units, the NPS may undertake actions that have both

beneficial and adverse impacts on park resources and values. However, the NPS is generally prohibited by law from taking or authorizing any action that would or is likely to impair park resources and values. Impairment is an impact that, in the professional judgment of the responsible NPS manager, would harm the integrity of park resources or values, including the opportunities that otherwise would be present for the enjoyment of those resources or values.

The FEIS ROD, dated November 22, 2000, concluded that, of the seven alternatives evaluated in the FEIS, only one (alternative G), which called for a phase-out of snowmobile use in the parks, did not impair park resources. This was the basis for selecting this alternative, as described in the rationale for the decision in the November 2000 ROD. In all other FEIS alternatives, the existing snowmobile use in Yellowstone was found to impair air quality, wildlife, the natural soundscape, and opportunities for the enjoyment of the park by visitors. In Grand Teton, impairment to the natural soundscape and opportunities for enjoyment of the park was found to result from the impacts of snowmobile and snowplane use. In the Parkway, impairment was found to result from snowmobile use on air quality, the natural soundscape, and opportunities for enjoyment of the park. These findings were made for all alternatives with snowmobile use, including those that would have required phased-in use of cleaner and quieter snowmobiles in accordance with set objectives for air and sound emissions. It was determined that there was no way to mitigate the impairment short of reducing the amount of use as determined by an effective carrying capacity analysis, or by imposing a suitable limit unsupported by such an analysis.

The final rule implementing FEIS alternative G, published in the **Federal Register** on January 22, 2001, recognized that, "achieving compliance with the applicable legal requirements while still allowing snowmobile use would require very strict limits on the numbers of both snowmobile and snowcoaches." Thus, the January 2001 rule recognized that some snowmobile and snowcoach use could possibly be accommodated in the parks through appropriate management actions without resulting in an impairment to park resources and values. The SEIS and March 25, 2003 ROD reinforced these conclusions.

The NPS believes that Alternative 4 of the Temporary Winter Use Plans EA would not impair park resources or values for several reasons. The alternative continues intensive monitoring of park resources and values, including air quality, natural soundscapes, wildlife, employee health and safety, and visitor experience. Alternative 4 is an intensively managed approach to preventing impairment of park resources and values through strict requirements on snowmobiles and snowcoaches and comprehensive monitoring. Alternative 4 sets daily entry limits that represent a use level just under the historical average number of snowmobiles entering YNP and will eliminate peak use days experienced in the past, while reducing overall snowmobile use, relative to historic averages. Limits on the numbers of snowmobiles will result in fewer conflicts with wildlife, fewer air and noise emissions, and improved road conditions. Limits on the numbers of snowmobiles also provide park managers with more predictable winter use patterns and an assurance that use cannot increase.

This alternative also mandates that all snowmobilers entering YNP be accompanied by a commercial guide. This requirement will reduce conflicts with wildlife along roadways because guides will be trained to deal with such situations. Commercial guides must also have reasonable control over their clientele, which greatly reduces unsafe and illegal snowmobile use. In this way, guides will ensure that park regulations are enforced and will provide a safer experience for visitors. The requirement that all snowmobilers travel with commercial guides will benefit natural soundscapes, since commercially guided parties tend to travel in relatively large groups, resulting in longer periods when snowmobile sound is not audible.

Finally, this alternative requires that both snowmobiles and snowcoaches entering the parks meet best available technology (BAT) requirements. This requirement will ensure that all recreational over-snow vehicles operating in the parks employ state of the art emissions control equipment.

Description of the Proposed Rule

The EA analyzed five alternatives with regard to winter use. These regulations propose to implement Alternative 4 from the EA. As previously outlined in the December 2003 regulations, many of the regulations regarding over-snow transportation have been in existence at the park under the authority of 36 CFR Part 7 or 36 CFR 1.5. Regulations such as the operating conditions, designated routes, and restricted hours of operation have been in effect and enforced by NPS employees for several years. They were included in the 2003 rulemaking in order to make them permanent and are included again in this rule, with only slight modifications, to remind the public of all the regulations that apply to over-snow transportation for each park area. Other regulations such as alcohol limits, BAT restrictions, daily entry limits and guiding restrictions that were new in the December 11, 2003, rule are included in this proposed rule.

The EA is intended to guide winter use management in the parks for a period of up to three winter seasons. During this time, the NPS will be preparing a long-term analysis on the effects of winter use in the parks. This long-term analysis will result in a permanent regulation on winter use management. The NPS will strive to complete this long-term analysis and rulemaking prior to the winter season 2006–2007. However, the NPS proposes to make this rule effective through the winter season 2006–2007 to allow for any unexpected delays.

Monitoring

Scientific studies and monitoring of winter visitor use and park resources (including air quality, natural soundscapes, wildlife, employee health and safety, water quality, and visitor experience) will continue. Selected areas of the parks, including sections of roads, will be closed to visitor use if scientific studies indicate that human presence or activities have a substantial effect on wildlife or other park resources that cannot otherwise be mitigated. A one-year notice will be provided before any such closure would be implemented unless immediate closure is deemed necessary to avoid impairment of park resources. Due to the temporary nature of these regulations, it would be impractical to utilize the adaptive management provisions of the SEIS and the December 11, 2003, final rule. Most non-emergency changes in park management implemented under the adaptive management framework would have been implemented only after at least one or two years of monitoring, followed by a 6- to 12-month implementation period. The superintendent will continue to have the authority under 36 CFR 1.5 to take emergency actions to protect park resources or values.

Best Available Technology Restrictions

To mitigate impacts to air quality and the natural soundscape, NPS is proposing to require that all recreational snowmobiles meet air and sound emission restrictions, hereafter referred

to as best available technology (BAT) restrictions, to operate in Yellowstone. For the winter 2003–2004, the NPS certified 12 different snowmobile models (from various manufacturers) as meeting the BAT restrictions. For air emissions restrictions, BAT means all snowmobiles must achieve a 90% reduction in hydrocarbons and a 70% reduction in carbon monoxide, relative to EPA's baseline emissions assumptions for conventional two-stroke snowmobiles. For sound restrictions, snowmobiles must operate at or below 73 dB(A) as measured at full throttle according to Society of Automotive Engineers J192 test procedures (revised 1985). The superintendent will maintain a list of approved snowmobile makes, models, and year of manufacture that meet BAT restrictions.

To comply with the BAT air emission restrictions, beginning with the 2005 model year (snowmobiles available for retail purchase in fall 2004), all snowmobiles must be certified under 40 CFR 1051 to a Family Emission Limit (FEL) no greater than 15 g/kW-hr for hydrocarbons and 120 g/kW-hr for carbon monoxide. For 2004 model year snowmobiles, measured emission levels (official emission results with no deterioration factor applied) must comply with the emission limits previously specified. Pre-2004 model year snowmobiles may be operated only if they have been shown to have emissions that do not exceed the limits specified above. Snowmobiles must be tested on a five-mode engine dynamometer, consistent with the test procedures specified by EPA (40 CFR 1051 and 1065). Other test methods could be approved by NPS on a case-by-case basis.

We are adopting the FEL method of demonstrating compliance with BAT because it has several advantages. First, use of FEL will ensure that all individual snowmobiles entering the parks achieve our emissions requirements, unless modified or damaged (under this proposed regulation, snowmobiles which are modified in such a way as to increase air or sound emissions will not be in compliance with BAT and not permitted to enter the parks). For this reason, FEL is the best mechanism to protect park air quality. Use of FEL will also represent the least amount of administrative burden on the snowmobile manufacturers to demonstrate compliance with NPS BAT requirements. Further, the EPA has the authority to insure that manufacturers' claims on their FEL applications are valid. EPA also requires that manufacturers conduct production line testing (PLT) to demonstrate that machines being manufactured actually meet the certification levels. If PLT indicates that emissions exceed the FEL levels, then the manufacturer is required to take corrective action. Through EPA's ability to audit manufacturers' emissions claims, NPS will have sufficient assurance that emissions information and documentation will be reviewed and enforced by the EPA. FEL also takes into account other factors, such as the deterioration rate of snowmobiles (some snowmobiles may produce more emissions as they age), lab-to-lab variability, test-to-test variability, and production line variance. In addition, under the EPA's regulations, all snowmobiles manufactured must be labeled with FEL air emissions information. This will help to ensure that our emissions requirements are consistent with these labels and the use of FEL will avoid potential confusion for consumers.

To determine compliance with the BAT sound emission restrictions, snowmobiles must be tested using SAE J192 (revised 1985) test procedures. We recognize that the SAE updated these test procedures in 2003. However, the changes between the 2003 and 1985 test procedures could alter the measurement results. The BAT requirement was established using 1985 test procedures (in addition to information provided by industry and modeling). Therefore, to be consistent with our BAT requirements, we must continue to use the 1985 test. We are interested in transitioning to the 2003 J192 test procedures, and we will continue to evaluate this issue after these regulations are implemented. Other test methods could be approved by NPS on a case-by-case basis.

The initial BAT requirement for sound was established by reviewing individual machine results from side-by-side testing performed by the NPS' contractor, Harris Miller Miller & Hanson Inc. (HMMH) and the State of Wyoming's contractor, Jackson Hole Scientific Investigations (JHSI). Six four-stroke snowmobiles were tested for sound emissions. These emission reports independently concluded that all the snowmobiles tested between 69.6 and 77.0 dB(A) using the J192 protocol. On average, the HMMH and JHSI studies measured four-strokes at 73.1 and 72.8 dB(A) at full throttle, respectively. The SAE J192 (revised 1985) test also allows for a tolerance of 2 dB(A) over the sound limit to account for variations in weather, snow conditions, and other factors.

Snowmobiles may be tested at any barometric pressure equal to or above 23.4 inches Hg uncorrected (as measured at or near the test site). This exception to the SAE J192 test procedures also maintains consistency with the testing conditions used to determine the BAT requirement. This reduced barometric pressure allowance is necessary since snowmobiles were tested at the high elevation of Yellowstone National Park, where atmospheric pressure is lower than the SAE J192's requirements due to the park's elevation. Initial testing data indicates that snowmobiles may test quieter at high elevation, and likewise be able to pass our BAT requirements at higher elevations but fail our requirements near sea level.

All commercially guided recreational snowmobiles operating within YNP would be required to meet the BAT restrictions.

Currently, little data exists on snowcoach emissions, with the exception of one laboratory study commissioned by the State of Wyoming that used a chassis dynamometer to measure emissions from one V–10 powered Ford E–350 15-passenger van (Lela, Chad C. and Jeff L. White, 2002). Field conditions in this study could not be replicated accurately in the laboratory because the percent of time a snowcoach operates in open-loop mode (with the throttle wide open, producing higher emissions) versus closed-loop mode (at normal throttle, producing extremely low emissions) is unknown. Running in snow on tracks requires more power than operation with wheels and thus the vehicle may operate in open-loop mode more frequently. In the EA, for air quality modeling purposes, snowcoaches were assumed to operate in open-loop mode ⅔ of the time and closed-loop mode ⅓ of the time.

Currently no industry standard air emissions testing procedure exists for snowcoaches that would be cost effective to implement in the field. Due to the cost, it would be impractical to use an engine or chassis dynamometer in the field to determine emissions of individual snowcoaches.

Approximately 70 snowcoaches operated in Yellowstone National Park during the winter of 2003–2004. Under concessions contracts issued in 2003, 78 snowcoaches are currently authorized. During the winter of 2003–2004, an average of 22 snowcoaches came into Yellowstone each day. Approximately 29 snowcoaches operating in the park were manufactured by Bombardier and were designed specifically for oversnow travel. Those 29 snowcoaches were manufactured prior to 1983 and are referred to as "historic snowcoaches" for the purpose of this rulemaking. All

other snowcoaches are 12- to 15-passenger vans that have been converted for oversnow travel using tracks and/or skis.

Therefore, the NPS is proposing to require that all non-historic snowcoaches meet the EPA standards that were applicable when the vehicle was manufactured. Most of these vehicles achieve EPA's Tier 1 emissions standards, which were phased-in from 1994–1996. To ensure that vehicles are meeting EPA's emissions standards, the NPS would require that the vehicle's original pollution control equipment not be modified or disabled. Snowcoach owners would be required to certify to the NPS' and make available for inspection upon NPS' request, that the vehicle's pollution control equipment is as originally manufactured.

In comparison with four-stroke snowmobiles, snowcoaches operating within EPA's Tier 1 standards are cleaner, especially given their ability to carry up to seven times more passengers (Lela and White 2002). In addition, in 2004 EPA began phasing-in Tier 2 emissions standards for multi-passenger vans, and they will be fully phased-in by 2009. Tier 2 standards will require that vehicles be even cleaner than Tier 1. Tier 2 standards would also significantly reduce the open loop mode of operation. If Tier 2 vehicles are converted to snowcoaches, then the emissions attributable to them would be further reduced in the parks.

If any of the vehicle's pollution control equipment, including the catalytic converter, associated piping, and other related parts that may release CO, HC or PM emissions in the event of mechanical failure or deterioration, had exceeded its useful life as published by the EPA, then the owner would be required to replace it to access Yellowstone. Generally, useful life for new vehicles (since 1996) is 120,000 miles or 11 years, whichever comes first. NPS is proposing that when a snowcoach owner replaces any pollution control equipment under this requirement, the new pollution control equipment be the original equipment, available from the vehicle's manufacturer rather than after-market equipment. If original equipment is no longer available snowcoach owners would be permitted to install after-market equipment. The NPS is proposing that snowcoach owners install original equipment if available because it generally has a longer useful life and may be more efficient in reducing pollutants, although both are certified to the same level of emissions reduction. These air emissions restrictions would be implemented during the 2005–2006 winter season.

NPS would continue to work with snowcoach owners, researchers, and other experts during future winters to better understand snowcoach emissions and to determine the most effective field testing methods. The NPS ultimately intends to set numerical performance-based limits for emissions before snowcoaches are allowed entry into the park. The NPS is proposing to allow additional time to phase-in air emissions restrictions for snowcoaches because of the substantial investment required to upgrade snowcoach technology and to encourage additional investment in mass transit snowcoaches.

Sound restrictions were proposed for snowcoaches under the 2003 regulations. However, the phase-in proposed at that time is outside the timeframe for this EA and proposed regulation. Therefore, any future sound restrictions will be considered in a longer term rulemaking.

Historic snowcoaches (defined as a Bombardier snowcoach manufactured in 1983 or earlier) would be exempt from air or sound restrictions; however NPS will work with snowcoach owners to retrofit historic snowcoaches to meet the air and sound restrictions. The NPS is exempting historic snowcoaches from air and sound restrictions to maintain the character of winter motorized oversnow travel. The NPS also believes it is reasonable and prudent to work with outfitters and concessioners to determine how best to upgrade their equipment.

In GTNP and the Parkway, all recreational snowmobiles operating on the Continental Divide Snowmobile Trail (CDST) and Jackson Lake must meet the BAT restrictions. BAT restrictions would also apply to all snowmobiles originating at Flagg Ranch and traveling west on the Grassy Lake Road. Snowmobiles originating in the Targhee National Forest and traveling eastbound on the Grassy Lake Road would not be required to meet the BAT restrictions; however, these snowmobiles could not travel further than Flagg Ranch. The NPS is allowing this exception because the Grassy Lake Road in the Parkway is approximately 6 miles long, snowmobiles are not required to meet BAT restrictions on U.S. Forest Service lands, and the NPS wishes to honor the request of the USFS that these visitors be able to access food, fuel, and other amenities available at Flagg Ranch. Any commercially guided snowmobiles authorized to operate in the Parkway or Grand Teton will be required to meet BAT restrictions.

NPS will annually publish a list of snowmobile makes, models, and year of manufacture that meet BAT restrictions. Any snowmobile manufacturers may demonstrate that snowmobiles are compliant with the BAT air emissions requirements by submitting a copy of their application used to demonstrate compliance with EPA's general snowmobile regulation to the NPS (indicating FEL). We will accept this application information from manufacturers in support of conditionally certifying a snowmobile as BAT, pending ultimate review and certification by EPA at the same emissions levels identified in the application. Should EPA certify the snowmobile at a level that would no longer meet BAT requirements, this snowmobile would no longer be considered to be BAT compliant and would be phased-out according to a schedule determined by the NPS to be appropriate. For sound emissions, snowmobile manufacturers could submit the existing Snowmobile Safety and Certification Committee (SSCC) sound level certification form. Under the SSCC machine safety standards program, snowmobiles are certified by an independent testing company as complying with all SSCC safety standards, including sound standards. This regulation does not require the SSCC form specifically, as there could be other acceptable documentation in the future. The NPS will work cooperatively with the snowmobile manufacturers on appropriate documentation. The NPS intends to rely on certified air and sound emissions data from the private sector rather than establish its own independent testing program, which would be cost prohibitive. When certifying snowmobiles as BAT, NPS will announce how long the BAT certification applies. Generally, each snowmobile model would be approved for entry into the parks for six winter seasons after it was first listed. Based on NPS experience, six years represents the typical useful life of a snowmobile, and thus six years provides purchasers with a reasonable length of time where operation is allowed once a particular model is listed as being compliant.

Individual snowmobiles modified in such a way as to increase sound and air emissions of HC and CO beyond the proposed emission restrictions would be denied entry to the parks. For both snowcoaches and snowmobiles, it would be the responsibility of the end users, and guides and outfitters (or private snowcoach owners to the extent they are permitted entry into the parks)

to ensure that their oversnow vehicles comply with all applicable restrictions. The requirement in Yellowstone that all snowmobilers travel with commercial guides will assist NPS in enforcing BAT requirements, since businesses providing commercial guiding services in the parks are bound by their contracts with the park to ensure that their clients' use only BAT snowmobiles. In addition, these businesses can ensure that snowmobiles used in the park are not modified in such a way as to increase sound or air emissions, and that BAT snowmobiles are properly maintained.

The restrictions on air and sound emissions proposed in this rule are not a restriction on what manufacturers may produce but an end-use restriction on which commercially produced snowmobiles and snowcoaches may be used in the parks. The NPS Organic Act (16 U.S.C. 1) authorizes the Secretary of the Interior to "promote and regulate" the use of national parks "by such means and measures as conform to the fundamental purpose of said parks * * * which purpose is to "conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." Further, the Secretary is expressly authorized by 16 U.S.C. 3 to "make and publish such rules and regulations as he may deem necessary or proper for the use and management of the parks * * *." This exercise of the NPS Organic Act authority is not an effort by the NPS to regulate manufacturers and is consistent with Sec. 310 of the Clean Air Act.

Since 2001, Yellowstone and Grand Teton National Parks have been converting their own administrative fleet of snowmobiles to four-stroke machines. These machines have proven successful in use throughout the parks. NPS intends to continue to purchase these snowmobiles for most administrative uses. However, the NPS recognizes that some administrative applications, such as off-trail boundary patrols in deep powder, towing heavy equipment or disabled sleds, or law enforcement uses may require additional power beyond that supplied by currently available snowmobiles that meet the BAT restrictions. In these limited cases, NPS may use snowmobiles that do not meet BAT restrictions proposed in this rule.

Use of Commercial Guides

To mitigate impacts to natural soundscapes, wildlife, and visitor and employee safety, all recreational snowmobiles operated in YNP must be accompanied by a commercial guide. This requirement will reduce conflicts with wildlife along roadways because guides will be trained to deal with such situations. Commercially guided parties tend to be larger in size, which reduces the overall number of encounters with wildlife and reduces the amount of time over-snow vehicles are audible. Commercial guides are educated in safety and are knowledgeable about park rules. Commercial guides must also have reasonable control over their clientele, which greatly reduces unsafe and illegal snowmobile use. Professional guides with contractual obligations to the NPS also permits more effective enforcement of park rules by the NPS. These guides receive rigorous multi-day training, perform guiding duties as employees of a business, and are experts at interpreting the resources of the parks to their clients. Commercial guides are employed by local businesses. Those jobs are not performed by NPS employees.

Commercial guides use a "follow-the-leader" approach, stopping often to talk with the group. They lead snowmobiles single-file through the park, using hand signals to pass information down the line from one snowmobile to the next, which has proven to be effective. Signals are used to warn group members about wildlife and other road hazards, indicate turns, and when to turn on or off the snowmobile. Further, all commercial guides are trained in basic first aid and CPR. In addition to first aid kits, they often carry satellite or cellular telephones, radios, or other communications devices for emergency use, and shovels to use in digging out vehicles. In this way, guides will ensure that park regulations are enforced and will provide a safer experience for visitors.

During the winter of 2003–2004, all snowmobilers were led by commercial guides for the first time in Yellowstone National Park's history. This had a significant positive effect on visitor health and safety. With all snowmobile access commercially guided, and adjusting visitation numbers to assume visitation was constant, park rangers issued 28% fewer snowmobile citations, 70% fewer moving violations, and made 85% fewer arrests.

Guided groups must contain no more than 11 snowmobiles, including the guide's machine. Individual snowmobiles may not be operated separately from a group within the park. A maximum group size of 11 was established so that no one party would be so large that a single guide could not safely direct and manage all party members. No minimum group size requirement is warranted at this time since commercially guided parties always have at least two snowmobiles—the guide and the customer. In addition, commercially guided snowmobile groups average 8 snowmobiles.

Except in emergency situations, guided parties must travel together and remain within a maximum distance of one-third mile of the first snowmobile in the group. This will insure that guided parties do not get spread too far out. One-third mile will allow for sufficient and safe spacing between individual snowmobiles within the guided party, allow the guide to maintain control over the group and minimize the impacts on wildlife and natural soundscapes.

In Grand Teton and the Parkway, all snowmobile parties traveling north from Flagg Ranch must be accompanied by a commercial guide. All other snowmobilers in Grand Teton and the Parkway do not have to be accompanied by a guide. The use of guides in Grand Teton and the Parkway is generally not required due to the low volume of use, the conditions for access to Jackson Lake for winter fishing, the through road characteristics of the CDST, as well as the inter-agency jurisdiction on the Grassy Lake Road.

Daily Snowmobile Limits

The number of snowmobiles that could operate in the parks each day would be limited under this rule. These limits are intended to mitigate impacts to air quality, employee and visitor health and safety, natural soundscapes, wildlife, and visitor experience. Once the daily snowmobile limits are reached, the only other means of public motorized access will be through the use of snowcoaches. No limits on snowcoach numbers are intended at this time. The limits are identified in Table 1. Use limits identified in Table 1 include guides since commercial guides are counted towards the daily limits. For YNP, the daily limits are identified for each entrance and location; for GTNP and the Parkway, the daily limits apply to total snowmobile use on the road segment and on Jackson Lake.

Limits are specifically identified for Old Faithful in this proposed rule since Xanterra Parks and Resorts, a park concessioner, provides snowmobile rentals and commercial guiding services there. This allows visitors additional opportunities to experience the park. For example, some visitors choose to enter the park on a snowcoach tour, spend two or more nights at Old

Faithful's Snow Lodge, and go on a commercially guided snowmobile tour of the park during their stay at Old Faithful.

Those limits are listed in the following table:

TABLE 1.—DAILY SNOWMOBILE ENTRY LIMITS

Park entrance/road segment/location	Number of snowmobiles
YNP—North Entrance	30
YNP—West Entrance	400
YNP—East Entrance	40
YNP—Old Faithful	30
YNP—South Entrance and the Parkway (Flagg Ranch to South Entrance)	220
GTNP and the Parkway—Total Use on Continental Divide Snowmobile Trail *	** 50
Grassy Lake Road (Flagg-Ashton Road)	** 50
Jackson Lake	** 40

*The Continental Divide Snowmobile Trail lies within both GTNP and the Parkway. The 50 daily snowmobile use limit applies to total use on this trail in both parks.

** These users do not have to be accompanied by a guide.

The purpose of these limits is to impose strict limits on the numbers of snowmobiles that may use the parks in order to minimize resulting impacts. Compared to historical use where peak days found as many as 1,700 snowmobiles in the parks, these limits represent a considerable reduction, and slightly less than the historic average of Yellowstone entries. These limits will reduce snowmobile usage from historic levels.

The daily snowmobile limits are based on the analysis contained in the EA, which concluded that these limits, combined with other elements of this rule, would prevent major adverse impacts thus preventing impairment to park resources and values while allowing for an appropriate range of experiences available to park visitors.

What Terms Do I Need To Know?

The NPS has added definitions for oversnow vehicle, designated oversnow route, and commercial guides. For snowmobiles, the NPS is using the definition found at 36 CFR 1.4, as there is no need to alter that definition at this time. Earlier rulemakings specific to Yellowstone, Grand Teton and the Parkway referenced "unplowed roadways" and that terminology was changed to "designated oversnow routes" to more accurately portray the condition of the route being used for oversnow travel. Despite this terminology change, these routes will remain entirely on roads or water surfaces used by motor vehicles and motorboats during other seasons. Previous rulemakings also referred only to snowmobiles or snowcoaches. Since there is a strong likelihood that new forms of machines will be developed that can travel on snow, a broader definition was developed to insure that such new technology remained subject to regulation. When a particular requirement or restriction only applies to a certain type of machine (for example, some concession restrictions only apply to snowcoaches) then the specific machine is stated and only applies to that type of vehicle, not all oversnow vehicles. However, oversnow vehicles that do not meet the strict definition of a snowcoach (i.e., both weight and passenger capacity) would be subject to the same requirements as snowmobiles. The definitions listed under § 7.13(l)(1) will apply to all three parks. These definitions may be further clarified based on changes in technology.

Where Must I Operate My Snowmobile in the Park?

Specific routes are listed where snowmobiles may operate, but this proposed rule also provides latitude for the superintendent to modify those routes available for use. When determining what routes are available for use, the superintendent will use the criteria in § 2.18(c), and may also take other issues into consideration including the most direct route of access, weather and snow conditions, the necessity to eliminate congestion, the necessity to improve the circulation of visitor use patterns in the interest of public safety and protection of park resources.

Snowmobiles authorized to operate on the frozen surface of Jackson Lake may gain access to the lake by trailering their snowmobiles to the parking areas near the designated access points via the plowed roadway. There is no direct access from the CDST to Jackson Lake, and use limits established for each area are distinctly separate.

What Other Conditions Apply to the Operation of Oversnow Vehicles?

A similar section existed in previous snowmobile regulations entitled "What other conditions are placed on snowmobile and snowcoach operations?" and addressed many of the same issues. A few minor changes have been made to those operating requirements, including modifying the operating hours by one hour, limiting idling to 5 minutes at any one time, and no longer allowing operation of a snowmobile by persons holding only a learner's permit. These modifications were made based on experiences over the last few winters with winter use operations and the need to adjust requirements for safety and resource impact considerations.

What Conditions Apply to Alcohol Use While Operating an Oversnow Vehicle?

Although the regulations in 36 CFR 4.23 apply to oversnow vehicles, additional regulations were needed to address the issue of under-age drinking while operating a snowmobile and snowcoach operators or snowmobile guides operating under the influence while performing services for others. Many states have adopted similar alcohol standards for under-age operators and commercial drivers and the NPS feels it is necessary to specifically include these regulations to help mitigate potential safety concerns.

The alcohol level for minors (anyone under the age of 21) is set at .02. Although the NPS endorses "zero tolerance", a very low Blood Alcohol Content (BAC) is established to avoid a chance of a false reading. Mothers Against Drunk Driving and other organizations have endorsed this enforcement posture and the NPS agrees that under-age drinking and driving, particularly in a harsh winter environment, will not be allowed.

In the case of snowcoach operators or snowmobile guides, a low BAC limit is also necessary. Persons operating a snowcoach are likely to be carrying 8 or

more passengers in a vehicle with tracks or skis that is more challenging to operate than a wheeled vehicle, and along oversnow routes that could pose significant hazards should the driver not be paying close attention or have impaired judgement. Similarly, persons guiding others on a snowmobile have put themselves in a position of responsibility for the safety of other visitors and for minimizing impacts to park wildlife and other resources. Should the guide's judgement be impaired, hazards such as wildlife on the road or snow obscured features, could endanger all members of the group in an unforgiving climate. For these reasons, the NPS is requiring that all guides be held to a stricter than normal standard for alcohol consumption. Therefore, the NPS has established a BAC limit of .04 for snowcoach operators and snowmobile guides. This is consistent with federal and state rules pertaining to BAC thresholds for someone with a commercial drivers license.

Do Other NPS Regulations Apply to the Use of Oversnow Vehicles?

Relevant portions of 36 CFR 2.18, including § 2.18(c), have been incorporated within these proposed regulations. Some portions of 36 CFR 2.18 and 2.19 are superseded by these proposed regulations, which allows these proposed regulations to govern maximum operating decibels, operating hours, and operator age (this is applicable to these park units only). In addition, 36 CFR 2.18(b) would not apply in Yellowstone, while it would apply in Grand Teton and the Parkway. This is due to the existing concurrent jurisdiction in Grand Teton and the Parkway. These two units are solely within the boundaries of the State of Wyoming and national park rangers work concurrently with state and county officers enforcing the laws of the State of Wyoming. The proposed rule also supersedes 36 CFR 2.19(b) because it provides for the towing of people behind an oversnow vehicle. The proposed rule prohibits towing of persons on skis, sleds, or other sliding devices by motor vehicle or snowmobile, except in emergency situations. Towing people, especially children, is a potential safety hazard and health risk due to road conditions, traffic volumes, and direct exposure to snowmobile emissions. This rule does not affect supply sleds attached by a rigid device or hitch pulled directly behind snowmobiles or other oversnow vehicles as long as no person or animal is hauled on them. Other provisions of 36 CFR Parts 1 and 2 continue to apply to the operation of oversnow vehicles unless specifically excluded here.

Are There Any Other Forms of Non-Motorized Oversnow Transportation Allowed in the Park?

YNP has specifically prohibited dog sledding and ski-joring (the practice of a skier being pulled by dogs or a vehicle) to prevent disturbance or harassment to wildlife. These restrictions have been in place for several years under regulatory authority and would now be codified in these regulations.

May I Operate a Snowplane?

Prior to the winter of 2002–2003, snowplanes were allowed on Jackson Lake within GTNP under a permit system. Based on the analysis set forth in the 2000 EIS and ROD, as reaffirmed in the EA, NPS has found and continues to believe that the use of snowplanes would impair park resources. As a result, and to avoid uncertainty based on the previous use on Jackson Lake, this proposed rule includes language that specifically prohibits the operation of snowplanes in each of these parks.

Is Violating Any of the Provisions of this Section Prohibited?

Some magistrates have interpreted the lack of a specific prohibitory statement to be ambiguous and therefore unenforceable. Although it would seem to be implicit that each instance of a failure to abide by specific requirements is a separate violation, the proposed regulation contains clarifying language for this purpose. Each occurrence of non-compliance with these regulations is a separate violation. However, it should also be noted that the individual regulatory provisions (*i.e.*, each of the separately numbered subparagraphs throughout these three sections) could be violated individually and are of varying severity. Thus, each subparagraph violated can and should receive an individual fine in accordance with the issuance of the park's bail schedule as issued by the appropriate magistrate. It is not intended that violations of multiple subparagraphs of these regulations be treated as a single violation or subject only to a single fine.

Summary of Economic Analysis

This analysis examines five alternatives for temporary winter use plans in the Greater Yellowstone Area (Yellowstone National Park, Grand Teton National Park, and John D. Rockefeller, Jr., Memorial Parkway). Alternative 1 would permit snowcoachs only, banning recreational snowmobile use within the parks. Alternative 1 is similar to the conditions expected under the January 2001 final rule. Alternative 2 would emphasize snowcoach access while allowing some snowmobile use with 100% commercially guided trips. That alternative is similar to the conditions experienced during the 2003–2004 winter season. Alternative 3 balances snowmobile and snowcoach access, and permits 20% unguided trips in Yellowstone. Alternative 4 allows more snowmobile use than Alternative 3, but requires 100% commercially guided trips in Yellowstone. Alternative 4 is the preferred alternative. Finally, Alternative 5 allows more snowmobile use than Alternative 4, and permits 20% non-commercially guided trips in Yellowstone. Alternative 5 is similar to the conditions expected under the December 2003 final rule.

This analysis estimates the benefits and costs associated with the 5 alternatives relative to two baselines: Alternative 1, which would ban snowmobiles, and historic snowmobile use as represented by the 1997–1998 winter season. The rationale for using these two baselines flows from two regulatory actions and two federal district court rulings. NPS issued a special regulation on January 22, 2001, phasing in a snowmobile ban. In settling a lawsuit filed by the International Snowmobile Manufactures' Association and other plaintiffs regarding that regulation, NPS agreed to re-evaluate its winter use plan alternatives, and subsequently issued a special regulation on December 11, 2003, permitting snowmobile use subject to certain management restrictions. On December 16, 2003, the Washington, DC, District Court issued a ruling overturning the December 2003 regulation and implementing the January 2001 regulation. Following that ruling on February 10, 2004, the Wyoming District Court issued a preliminary injunction against implementing the January 2001 regulation.

These two rulings potentially imply the two baselines used in this analysis. In order to cover the potential range of analysis suggested by these rulings, NPS used Alternative 1 and historic snowmobile use as alternative baselines to estimate the benefits and costs of its proposed temporary winter use plan alternatives. NPS believes that the actual economic impacts of the proposed temporary winter use plan alternatives fall within the range of benefits and costs estimated relative to these two baselines.

The quantitative results of the benefit-cost analysis are summarized below for the Alternative 1 and the historical baselines, respectively. It is important to

note that this analysis could not account for all costs or benefits due to limitations in available data. For example, the costs associated with adverse impacts to park resources and with law enforcement incidents are not reflected in the quantified net benefits presented in this summary. It is also important to note that the benefit-cost analysis addresses the economic efficiency of the different alternatives and not their distributive equity (*i.e.*, does not identify the sectors or groups on which the majority of impacts fall). Therefore, additional explanation is required when interpreting the results of this benefit-cost analysis. An explanation of the selection of the preferred alternative is given following the summaries of quantified benefits and costs.

Quantified Benefits and Costs Relative to the Alternative 1 Baseline

The primary beneficiaries of Alternatives 2, 3, 4, and 5 relative to the Alternative 1 baseline are the park visitors who ride snowmobiles in the park and the businesses that serve them such as rental shops, restaurants, gas stations, and hotels. Overall, Alternative 5 should provide greater quantified benefits to snowmobiles than Alternatives 2 through 4. The daily caps on snowmobile use vary across the four alternatives, with Alternative 5 allowing the most snowmobiles per day into the parks. Alternatives 2, 3 (in 2004–2005), and 4 require snowmobilers to be part of a commercially guided tour, which is expected to reduce benefits to snowmobilers who prefer unguided tours or who face additional expenses from being forced to take a guided tour. Alternatives 3 (in 2005–2006 and beyond) and 5 allow for at least 20% of the tours to be unguided or led by non-commercial guides, which may somewhat mitigate the potential loss in benefits associated with the commercial guided tour requirement.

The primary consumer group that would incur costs under Alternatives 2, 3, 4, and 5 would be the park visitors who do not ride snowmobiles. Out of the set of alternatives that allow for continued snowmobile access to the parks, Alternative 2 is expected to impose the lowest costs on non-snowmobile users because of the lower daily limits and the commercially guided tour requirements.

Alternative 5 is expected to provide the greatest benefits to local businesses because it places the least restrictions on snowmobilers and is expected to result in the largest increase in visitation. Alternatives 2 and 4 are the most restrictive options for snowmobilers (primarily due to the requirement that all snowmobilers in Yellowstone must be on commercially guided tours) and are expected to result in the smallest increase in visitation relative to the Alternative 1 baseline among Alternatives 2 through 5.

Based on the results of this analysis, the losses to non-snowmobilers generally outweigh the gains to snowmobilers and local businesses. However, there are a number of uncertainties that may influence this result. The most important factor is that this analysis applies the losses to non-snowmobilers that were determined from a survey conducted in Yellowstone to non-snowmobilers in Grand Teton. This may overstate the losses to non-snowmobilers in Grand Teton because there is less snowmobile use in Grand Teton than in Yellowstone, which may imply that non-snowmobilers are less affected by their presence. In addition, snowmobile use in Grand Teton tends to be in separate areas of the park from non-snowmobile activities to a greater extent than for Yellowstone where there is much more overlap in the areas used by these visitors.

The present values of quantified net benefits (benefits minus costs) are presented in Table 1 for the Alternative 1 baseline. As noted above, these quantified net benefits do not account for certain costs associated with the protection of park resources or with law enforcement incidents. Further, these quantified net benefits do not reflect potentially significant distributive impacts on local communities. The amortized quantified net benefits per year are presented in Table 2 for the Alternative 1 baseline.

TABLE 1.—TOTAL PRESENT VALUE OF QUANTIFIED NET BENEFITS FOR THE WINTER USE PLANS IN THE GREATER YELLOWSTONE AREA 2004–2005 THROUGH 2006–2007 RELATIVE TO THE ALTERNATIVE 1 BASELINE

	Total present value of quantified net benefits
Alternative 2	
Discounted at 3%[a]	–$32,916,000 to –$15,355,580
Discounted at 7%[a]	–$30,514,550 to –$14,230,820
Alternative 3	
Discounted at 3%[a]	–$42,684,800 to –$19,252,100
Discounted at 7%[a]	–$39,607,950 to –$17,966,630
Alternative 4	
Discounted at 3%[a]	–$44,430,830 to –$25,785,420
Discounted at 7%[a]	–$41,197,880 to –$23,913,490
Alternative 5	
Discounted at 3%[a]	–$38,634,080 to –$12,498,680
Discounted at 7%[a]	–$35,822,200 to –$11,591,350

[a] Office of Management and Budget Circular A–4 recommends a 7% discount rate in general, and a 3% discount rate when analyzing impacts to private consumption.

TABLE 2.—AMORTIZED QUANTIFIED NET BENEFITS PER YEAR FOR THE WINTER USE PLANS IN THE GREATER YELLOWSTONE AREA 2004–2005 THROUGH 2006–2007 RELATIVE TO THE ALTERNATIVE 1 BASELINE

	Amortized quantified net benefits per year[b]
Alternative 2	
Discounted at 3%[a]	–$11,636,805 to –$5,428,664
Discounted at 7%[a]	–$11,627,620 to –$5,422,678
Alternative 3	
Discounted at 3%[a]	–$15,089,949 to –$6,803,579

TABLE 2.—AMORTIZED QUANTIFIED NET BENEFITS PER YEAR FOR THE WINTER USE PLANS IN THE GREATER YELLOWSTONE AREA 2004–2005 THROUGH 2006–2007 RELATIVE TO THE ALTERNATIVE 1 BASELINE—Continued

	Amortized quantified net benefits per year[b]
Discounted at 7%[a]	–$15,092,233 to –$6,843,494
Alternative 4	
Discounted at 3%[a]	–$15,707,647 to –$9,115,929
Discounted at 7%[a]	–$15,698,521 to –$9,112,275
Alternative 5	
Discounted at 3%[a]	–$13,658,320 to –$4,418,663
Discounted at 7%[a]	–$13,650,109 to –$4,416,903

[a] Office of Management and Budget Circular A–4 recommends a 7% discount rate in general, and a 3% discount rate when analyzing impacts to private consumption.

[b] This is the present value of quantified net benefits reported in Table 1 amortized over the three-year analysis timeframe at the indicated discount rate.

Quantified Benefits and Costs Relative to the Historical Use Baseline

The primary losses under Alternatives 1 through 5 relative to the historical use baseline accrue to the park visitors who ride snowmobiles in the parks and the businesses that serve them. Overall, Alternative 1 would impose greater losses on snowmobilers since it would ban snowmobiles in the parks. The losses associated with Alternatives 2 through 5 are less since those alternatives would allow some level of snowmobile use. Alternatives 2 and 4 would also require 100% commercially guided tours. That feature is expected to increase losses to snowmobilers who prefer unguided tours or who face additional expenses from being forced to take commercially guided tours.

The primary beneficiaries of Alternatives 1 through 5 would be the park visitors who do not ride snowmobiles. Alternative 1 would yield the greatest benefits for non-snowmobilers. Out of the set of alternatives allowing continued snowmobile access to the parks, Alternative 2 is expected to generate the largest gains for non-snowmobilers because of the lower daily limits, stricter technology requirements, and the commercially guided tour requirement. Alternative 4 is expected to generate only slightly lower gains for non-snowmobile users than Alternative 2, with the biggest difference between Alternatives 2 and 4 coming from the higher daily use limits under Alternative 4.

For businesses, the losses relative to the historical use baseline are expected to be ordered in the same way as losses accruing to snowmobilers because they are driven largely by the number of visitors. Alternative 1 is expected to have the greatest negative impact on local businesses because it places the highest restrictions on snowmobilers and is expected to result in the largest decrease in visitation. Alternative 5 is the least restrictive option for snowmobilers and is expected to result in the smallest decrease in visitation.

Based on the results of this analysis, the gains to non-snowmobilers generally outweigh the losses to snowmobilers and local businesses. However, as noted in the summary of benefits and costs relative to the Alternative 1 baseline, there are a number of uncertainties that may influence this result. The most important factor is that this analysis applies the gains to non-snowmobilers that were determined from a survey conducted in Yellowstone to non-snowmobilers in Grand Teton. This may overstate the gains to non-snowmobilers in Grand Teton because there is less snowmobile use in Grand Teton than in Yellowstone, which may imply that non-snowmobilers are less affected by their presence. In addition, snowmobile use in Grand Teton tends to be in separate areas of the park from non-snowmobile activities to a greater extent than for Yellowstone where there is much more overlap in the areas used by these visitors.

The present values of quantified net benefits (benefits minus costs) are presented in Table 3 for the historical use baseline. As noted above, these quantified net benefits do not account for certain costs associated with the protection of park resources or with law enforcement incidents. Further, these quantified net benefits do not reflect potentially significant distributive impacts on local communities. The amortized quantified net benefits per year are presented in Table 4 for the historical use baseline.

The business output impacts presented in the Environmental Assessment reflect all businesses; however, 69 of the 74 snowmobile rental shops and guided tour operators with available revenue estimates were classified as small businesses in the regulatory flexibility analysis conducted for this rulemaking. Therefore, these business output impacts are considered to be strongly indicative of the impacts to small businesses. Additionally, 88% of the business output impacts estimated in the Environmental Assessment for all of Wyoming, Montana, and Idaho were concentrated in the immediate five counties surrounding the parks. Therefore, these business output impacts are also considered to be strongly indicative of the distributive equity impacts to the local communities.

TABLE 3.—TOTAL PRESENT VALUE OF QUANTIFIED NET BENEFITS FOR THE WINTER USE PLANS IN THE GREATER YELLOWSTONE AREA 2004–2005 THROUGH 2006–2007 RELATIVE TO THE HISTORICAL USE BASELINE

	Total Present Value of Quantified Net Benefits
Alternative 1	
Discounted at 3%[a]	$122,314,860 to $130,820,690
Discounted at 7%[a]	$113,396,820 to $121,284,230
Alternative 2	
Discounted at 3%[a]	$87,300,330 to $92,045,050
Discounted at 7%[a]	$80,934,930 to $85,334,010

TABLE 3.—TOTAL PRESENT VALUE OF QUANTIFIED NET BENEFITS FOR THE WINTER USE PLANS IN THE GREATER YELLOWSTONE AREA 2004–2005 THROUGH 2006–2007 RELATIVE TO THE HISTORICAL USE BASELINE—Continued

	Total Present Value of Quantified Net Benefits
Alternative 3	
Discounted at 3%[a]	$76,587,670 to $81,101,950
Discounted at 7%[a]	$70,989,350 to $75,184,950
Alternative 4	
Discounted at 3%[a]	$75,004,190 to $79,954,170
Discounted at 7%[a]	$69,534,980 to $74,125,250
Alternative 5	
Discounted at 3%[a]	$77,031,490 to $81,229,710
Discounted at 7%[a]	$71,414,320 to $75,307,790

[a] Office of Management and Budget Circular A–4 recommends a 7% discount rate in general, and a 3% discount rate when analyzing impacts to private consumption.

TABLE 4.—AMORTIZED QUANTIFIED NET BENEFITS PER YEAR FOR THE WINTER USE PLANS IN THE GREATER YELLOWSTONE AREA 2004–2005 THROUGH 2006–2007 RELATIVE TO THE HISTORICAL USE BASELINE

	Amortized Quantified Net Benefits per Year[b]
Alternative 1	
Discounted at 3%[a]	$43,242,020 to $46,249,090
Discounted at 7%[a]	$43,210,050 to $46,215,560
Alternative 2	
Discounted at 3%[a]	$30,863,320 to $32,540,720
Discounted at 7%[a]	$30,840,390 to $32,516,670
Alternative 3	
Discounted at 3%[a]	$27,076,067 to $28,672,000
Discounted at 7%[a]	$27,050,610 to $28,649,350
Alternative 4	
Discounted at 3%[a]	$26,516,260 to $28,266,230
Discounted at 7%[a]	$26,496,420 to $28,245,550
Alternative 5	
Discounted at 3%[a]	$27,232,970 to $28,717,170
Discounted at 7%[a]	$27,212,550 to $28,696,160

[a] Office of Management and Budget Circular A–4 recommends a 7% discount rate in general, and a 3% discount rate when analyzing impacts to private consumption.

[b] This is the present value of quantified net benefits reported in Table 3 amortized over the three-year analysis timeframe at the indicated discount rate.

Explanation of Selected Preferred Alternative

The preferred alternative was selected because it best balances winter use with protection of park resources to ensure that adverse impacts from historical types and numbers of snowmobile uses do not occur. The preferred alternative demonstrates the NPS commitment to monitor and use results to adjust winter use program. Last winter, the NPS implemented the monitoring program that it committed to in the 2003 decision, and the results of that monitoring were used to help formulate the alternatives in this EA as well as guide the decisions being made. The preferred alternative applies the lessons learned in the winter of 2003–2004 relative to commercial guiding, which demonstrated, among other things, that 100% commercial guiding was very successful and offers the best opportunity for achieving goals of protecting park resources and allowing balanced use of the parks. Law enforcement incidents were reduced well below historic numbers, taking into account reduced visitation. That reduction is attributed to the quality of the guided program.

The preferred alternative uses strictly limited snowmobile numbers (below the historic average use level for Yellowstone) combined with best available technology requirements for snowmobiles and 100% commercial guiding to help ensure that the purpose and need for the environmental assessment is best met. With strictly limited snowmobile use combined with snowcoaches, park visitors will have a range of appropriate winter recreational opportunities. With the significant restrictions built into snowmobile use, this plan also ensures that these recreational activities will not impair or irreparably harm park resources or values.

Last winter was the first time the NPS had the opportunity to collect information on a strictly managed snowmobile program. The preferred alternative will allow the NPS to continue to collect additional monitoring data on strictly limited snowmobile and snowcoach use. The monitoring data is extremely important in helping the NPS understand the results of its management actions. Prior to the winter of 2003–2004, the only monitoring information the NPS had was on historic snowmobile use. The EIS, SEIS, and to a certain extent this EA relied on modeling to forecast impacts. The modeling is useful for comparison purposes so that managers can understand the relative differences among alternatives, but it does not replicate on-the-ground conditions. Monitoring measures actual outcomes. With only one winter's data on strictly managed snowmobile use, the ability of the NPS to understand the impacts of a strictly controlled management regime is limited. Implementing this plan will allow for additional winters of monitoring information.

The preferred alternative also supports the communities and businesses both near and far from the parks and will encourage them to have an economically sustainable winter recreation program. Peak snowmobile numbers allowed under the preferred alternative are below the historic averages, but the snowmobile limits should provide a viable program for winter access to the parks, and in combination with snowcoach access, support overall historic visitor use levels. The preferred alternative provides certainty for park visitors, communities, and businesses by laying out a program for winter use for up to the next three winters.

Compliance With Other Laws

Regulatory Planning and Review (Executive Order 12866)

This document is a significant rule and has been reviewed by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. These conclusions are based on the report "Economic Analysis of Temporary Regulations on Snowmobile Use in the Greater Yellowstone Area" (RTI International, August 2004).

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. Implementing actions under this rule will not interfere with plans by other agencies or local government plans, policies, or controls since this is an agency specific change.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. It only affects the use of over-snow machines within specific national parks. No grants or other forms of monetary supplement are involved.

(4) This rule may raise novel legal or policy issues. The issue has generated local as well as national interest on the subject in the Greater Yellowstone Area. The NPS has been the subject of numerous lawsuits regarding winter use management.

Regulatory Flexibility Act

The Department of the Interior has determined that this document will have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Therefore an Initial Regulatory Flexibility Analysis has been conducted. The information is contained in the report entitled "Economic Analysis of Temporary Regulations on Snowmobile Use in the Greater Yellowstone Area" (RTI International, August 2004). This initial report is available on the Yellowstone Web site. Final versions of these reports will be available upon publication of the final rule. The NPS is proposing an alternative that requires 100% guided snowmobiles in Yellowstone National Park to minimize impacts to park resources. Based on information available at this time, NPS believes that alternative 4 will minimize adverse economic effects to local businesses as compared to alternatives 1 and 2.

The NPS welcomes additional data from affected businesses to enable it to further analyze the effects of this rulemaking with respect to small businesses.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This rulemaking has no effect on methods of manufacturing or production and specifically affects the Greater Yellowstone Area, not national or U.S. based enterprises.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. It addresses public use of national park lands, and imposes no requirements on other agencies or governments.

Takings (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. Access to private property located within or adjacent to the parks will still be afforded the same access during winter as before this rule. No other property is affected.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. It addresses public use of national park lands, and imposes no requirements on other agencies or governments.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB form 83–I is not required.

National Environmental Policy Act

An Environmental Assessment and draft Finding of No Significant Impact (FONSI) have been completed and are also available for comment. The EA and draft FONSI are available for review by contacting Yellowstone or Grand Teton Planning Offices or at *http://www.nps.gov/yell/winteruse-ea.* Comments are being solicited separately on the EA/Draft FONSI and this proposed rule. *See* the Public Participation section for more information on commenting on the EA/Draft FONSI.

Government-to-Government Relationship with Tribes

In accordance with the President's memorandum of April 29, 1994, "Government to Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2:

The NPS has evaluated potential effects on federally recognized Indian tribes and have determined that there are no potential effects. Numerous tribes in the area were consulted in the development of the previous SEIS. Their major concern was to reduce the adverse effects on wildlife by snowmobiles. This rule does that through implementation of the guiding requirements and disbursement of snowmobile use through the various entrance stations.

Clarity of Rule

Executive Order 12866 requires each agency to write regulations that are easy

to understand. The NPS invites your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to read if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "§" and a numbered heading; for example § 7.13 Yellowstone National Park.) (5) Is the description of the rule in the "Supplementary Information" section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also e-mail the comments to this address: *Exsec@ios.doi.gov.*

Drafting Information: The primary authors of this regulation were Kym Hall, Special Assistant, National Park Service, Washington DC; Kevin Schneider, Outdoor Recreation Planner, and John Sacklin, Management Assistant, Yellowstone National Park; and Gary Pollock, Management Assistant, Grand Teton National Park.

Public Participation: If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to Winter Use Proposed Rule, Yellowstone National Park, P.O. Box 168, Yellowstone National Park, WY 82190. You may also comment via the Internet at *http://www.nps.gov/yell/winteruse-ea.* Finally, you may hand deliver comments to Winter Use Planning Office, Mammoth Hot Springs, Yellowstone National Park, Wyoming. All comments must be received by midnight of the close of the comment period. Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that the NPS withhold their home address from the rulemaking record, which they will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, the NPS will not consider anonymous comments. The NPS will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

As noted previously, an EA/Draft FONSI is also open for public comment. Those wishing to comment on both this proposed rule and the EA/Draft FONSI should submit separate comments for each. EA/Draft FONSI comments may be addressed to: Temporary Winter Use Plan EA, P.O. Box 168, Yellowstone National Park, WY 82190. Additional information about the EA is available online at: *http://www.nps.gov/yell/winteruse-ea.*

List of Subjects in 36 CFR Part 7

District of Columbia, National parks, Reporting and Recordkeeping requirements.

The NPS proposes to amend 36 CFR Part 7 as set forth below:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority for Part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under D.C. Code 8–137(1981) and D.C. Code 40–721 (1981).

2. Amend § 7.13 by revising paragraph (l) to read as follows:

§ 7.13 Yellowstone National Park.

* * * * *

(l)(1) *What is the scope of this regulation?* The regulations contained in paragraphs (l)(2) through (1)(17) of this section are intended to apply to the use of recreational and commercial snowmobiles. Except where indicated, paragraphs (1)(2) through (l)(17) do not apply to non-administrative snowmobile or snowcoach use by NPS, contractor or concessioner employees who live or work in the interior of Yellowstone, or other non-recreational users authorized by the Superintendent.

(2) *What terms do I need to know?* This paragraph also applies to non-administrative snowmobile use by the NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

Commercial guide means those guides who operate as a snowmobile guide for a fee or compensation and are authorized to operate in the park under a concession contract. In this section, "guide" also means "commercial guide."

Oversnow route means that portion of the unplowed roadway located between the road shoulders and designated by snow poles or other poles, ropes, fencing, or signs erected to regulate over-snow activity. Oversnow routes include pullouts or parking areas that are groomed or marked similarly to roadways and are adjacent to designated oversnow routes. An oversnow route may also be distinguished by the interior boundaries of the berm created by the packing and grooming of the unplowed roadway. The only motorized vehicles permitted on oversnow routes are oversnow vehicles.

Oversnow vehicle means a snowmobile, snowcoach, or other motorized vehicle that is intended for travel primarily on snow and is authorized by the Superintendent to operate in the park. An oversnow vehicle that does not meet the definition of a snowcoach or a snowplane must comply with all requirements applicable to snowmobiles.

Snowcoach means a self-propelled mass transit vehicle intended for travel on snow, having a curb weight of over 1000 pounds (450 kilograms), driven by a track or tracks and steered by skis or tracks, and having a capacity of at least 8 passengers.

Snowplane means a self-propelled vehicle intended for oversnow travel and driven by an air-displacing propeller.

(3) *May I operate a snowmobile in Yellowstone National Park?* (i) You may operate a snowmobile in Yellowstone National Park in compliance with use limits, guiding requirements, operating hours and dates, equipment, and operating conditions established pursuant to this section. The Superintendent may establish additional operating conditions and shall provide notice of those conditions in accordance with § 1.7(a) of this chapter or in the **Federal Register**.

(ii) The authority to operate a snowmobile in Yellowstone National Park established in paragraph (l)(3)(i) of this section is in effect only through the winter season of 2006–2007.

(4) *May I operate a snowcoach in Yellowstone National Park?* (i) Commercial snowcoaches may be operated in Yellowstone National Park under a concessions contract. Non-commercial snowcoaches may be operated if authorized by the Superintendent. Snowcoach operation is subject to the conditions stated in the concessions contract and all other conditions identified in this section.

(ii) Beginning with the winter of 2005–2006, all non-historic snowcoaches must meet NPS air emissions requirements. These requirements are the applicable EPA

emission standards for the vehicle at the time it was manufactured.

(iii) All critical emission-related exhaust components (as defined in 40 CFR 86.004–25(b)(3)(iii) through (v)) must be functioning properly. Malfunctioning critical emissions-related components must be replaced with the original equipment manufacturer (OEM) component, where possible. Where OEM parts are not available, aftermarket parts may be used. In general, catalysts that have exceeded their useful life must be replaced unless the operator can demonstrate the catalyst is functioning properly.

(iv) Modifying or disabling a snowcoach's original pollution control equipment is prohibited except for maintenance purposes.

(v) Individual snowcoaches may be subject to periodic inspections to determine compliance with the requirements of paragraphs (l)(4)(ii) through (l)(4)(iv) of this section.

(vi) Historic snowcoaches (Bombardier snowcoaches manufactured in 1983 or earlier) are not initially required to meet air emissions restrictions.

(vii) The authority to operate a snowcoach in Yellowstone National Park established in paragraph (l)(4)(i) of this section is in effect only through the winter season of 2006–2007.

(5) *Must I operate a certain model of snowmobile?* Only commercially available snowmobiles that meet NPS air and sound emissions requirements may be operated in the park. The Superintendent will approve snowmobile makes, models, and year of manufacture that meet those requirements. Any snowmobile model not approved by the Superintendent may not be operated in the park.

(6) *How will the Superintendent approve snowmobile makes, models, and year of manufacture for use in the park?* (i) Beginning with the 2005 model year, all snowmobiles must be certified under 40 CFR part 1051, to a Family Emission Limit no greater than 15 g/kW-hr for hydrocarbons and to a Family Emission Limit no greater than 120 g/kW-hr for carbon monoxide.

(A) 2004 model year snowmobiles may use measured emissions levels (official emission results with no deterioration factors applied) to comply with the emission limits specified in paragraph (l)(6)(i) of this section.

(B) Snowmobiles manufactured prior to the 2004 model year may be operated only if they have been shown to have emissions no greater than the requirements identified in paragraph (l)(6)(i) of this section.

(C) The snowmobile test procedures specified by EPA (40 CFR 1051 and 1065) shall be used to measure air emissions from model year 2004 and later snowmobiles. Equivalent procedures may be used for earlier model years.

(ii) For sound emissions snowmobiles must operate at or below 73 dB(A) as measured at full throttle according to Society of Automotive Engineers J192 test procedures (revised 1985). Snowmobiles may be tested at any barometric pressure equal to or above 23.4 inches Hg uncorrected.

(iii) The Superintendent may prohibit entry into the park of any snowmobile that has been modified in a manner that may adversely affect air or sound emissions.

(7) *Where must I operate my snowmobile in Yellowstone National Park?* You must operate your snowmobile only upon designated oversnow routes established within the park in accordance with § 2.18(c) of this chapter. The following oversnow routes are so designated for snowmobile use through the winter season of 2006–2007:

(i) The Grand Loop Road from its junction with Terrace Springs Drive to Norris Junction.

(ii) Norris Junction to Canyon Junction.

(iii) The Grand Loop Road from Norris Junction to Madison Junction.

(iv) The West Entrance Road from the park boundary at West Yellowstone to Madison Junction.

(v) The Grand Loop Road from Madison Junction to West Thumb.

(vi) The South Entrance Road from the South Entrance to West Thumb.

(vii) The Grand Loop Road from West Thumb to its junction with the East Entrance Road.

(viii) The East Entrance Road from the East Entrance to its junction with the Grand Loop Road.

(ix) The Grand Loop Road from its junction with the East Entrance Road to Canyon Junction.

(x) The South Canyon Rim Drive.

(xi) Lake Butte Road.

(xii) In the developed areas of Madison Junction, Old Faithful, Grant Village, Lake, Fishing Bridge, Canyon, Indian Creek, and Norris.

(xiii) Firehole Canyon Drive between noon and 9 p.m. each day.

(xiv) The Superintendent may open or close these routes, or portions thereof, for snowmobile travel after taking into consideration the location of wintering wildlife, appropriate snow cover, public safety, and other factors. Notice of such opening or closing shall be provided by one or more of the methods listed in § 1.7(a) of this chapter.

(xv) This paragraph (l)(7) also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(xvi) Maps detailing the designated oversnow routes will be available from Park Headquarters.

(8) *What routes are designated for snowcoach use?* Authorized snowcoaches may only be operated on the routes designated for snowmobile use in paragraphs (l)(7)(i) through (l)(7)(xii) of this section and the following additional oversnow routes through the winter season 2006–2007:

(i) Firehole Canyon Drive.

(ii) Fountain Flat Road.

(iii) Virginia Cascades Drive.

(iv) North Canyon Rim Drive.

(v) Riverside Drive.

(vi) That portion of the Grand Loop Road from Canyon Junction to Washburn Hot Springs overlook.

(vii) The Superintendent may open or close these oversnow routes, or portions thereof, or designate new routes for snowcoach travel after taking into consideration the location of wintering wildlife, appropriate snow cover, public safety, and other factors. Notice of such opening or closing shall be provided by one or more of the methods listed in § 1.7(a) of this chapter.

(viii) This paragraph (l)(8) also applies to non-administrative snowcoach use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(9) *Must I travel with a commercial guide while snowmobiling in Yellowstone and what other guiding requirements apply?* (i) All recreational snowmobile operators must be accompanied by a commercial guide.

(ii) Snowmobile parties must travel in a group of no more than 11 snowmobiles, including that of the guide.

(iii) Guided parties must travel together within a maximum of one-third mile of the first snowmobile in the group.

(10) *Are there limits established for the numbers of snowmobiles permitted to operate in the park each day?* The numbers of snowmobiles allowed to operate in the park each day will be limited to a certain number per entrance or location. The limits are listed in the following table:

TABLE 1.—TO § 7.13—DAILY SNOWMOBILE LIMITS

Park entrance/location	Total number of commercially guided snowmobile allocations
(i) YNP—North entrance	30
(ii) YNP—West entrance	400
(iii) YNP—South entrance	220
(iv) YNP—East entrance	40
(v) YNP—Old Faithful	30

(11) *When may I operate my snowmobile or snowcoach?* The Superintendent will determine operating hours and dates. Expect for emergency situations, changes to operating hours may be made annually and the public will be notified of those changes through one or more of the methods listed in § 1.7(a) of this chapter.

(12) *What other conditions apply to the operation of oversnow vehicles?* (i) The following are prohibited:

(A) Idling an oversnow vehicle more than 5 minutes at any one time.

(B) Driving an oversnow vehicle while the driver's motor vehicle license or privilege is suspended or revoked.

(C) Allowing or permitting an unlicensed driver to operate an oversnow vehicle.

(D) Driving an oversnow vehicle in willful or wanton disregard for the safety of persons, property, or park resources or otherwise in a reckless manner.

(E) Operating an oversnow vehicle without a lighted white headlamp and red taillight.

(F) Operating an oversnow vehicle that does not have brakes in good working order.

(G) The towing of persons on skis, sleds or other sliding devices by oversnow vehicles, except in emergency situations.

(ii) The following are required:

(A) All oversnow vehicles that stop on designated routes must pull over to the far right and next to the snow berm. Pullouts must be utilized where available and accessible. Oversnow vehicles may not be stopped in a hazardous location or where the view might be obscured, or operating so slowly as to interfere with the normal flow of traffic.

(B) Oversnow vehicle drivers must possess a valid motor vehicle driver's license. A learner's permit does not satisfy this requirement. The license must be carried by the driver at all times.

(C) Equipment sleds towed by a snowmobile must be pulled behind the snowmobile and fastened to the snowmobile with a rigid hitching mechanism.

(D) Snowmobiles must be properly registered and display a valid registration from the United States or Canada.

(iii) The Superintendent may impose other terms and conditions as necessary to protect park resources, visitors, or employees. The public will be notified of any changes through one or more methods listed in § 1.7(a) of this chapter.

(iv) This paragraph (l)(12) also applies to non-administrative snowmobile use by NPS, contractor or concessioner employee, or other non-recreational users as authorized by the Superintendent.

(13) *What conditions apply to alcohol use while operating an oversnow vehicle?* In addition to the regulations contained in 36 CFR 4.23, the following conditions apply:

(i) Operating or being in actual physical control of an oversnow vehicle is prohibited when the driver is under 21 years of age and the alcohol concentration in the driver's blood or breath is 0.02 grams or more of alcohol per 100 milliliters of blood or 0.02 grams or more of alcohol per 210 liters of breath.

(ii) Operating or being in actual physical control of an oversnow vehicle is prohibited when the driver is a snowmobile guide or a snowcoach driver and the alcohol concentration in the operator's blood or breath is 0.04 grams or more of alcohol per 100 milliliters of blood or 0.04 grams or more of alcohol per 210 liters of breath.

(iii) This paragraph (l)(13) also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users as authorized by the Superintendent.

(14) *Do other NPS regulations apply to the use of oversnow vehicles?* (i) The use of oversnow vehicles in Yellowstone is not subject to §§ 2.18 (b), (d), (e), and 2.19(b) of this chapter.

(ii) This paragraph (l)(14) also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users as authorized by the Superintendent.

(15) *Are there any forms of non-motorized oversnow transportation allowed in the park?* (i) Non-motorized travel consisting of skiing, skating, snowshoeing, or walking is permitted unless otherwise restricted pursuant to this section or other provisions of 36 CFR part 1.

(ii) The Superintendent may designate areas of the park as closed, reopen such areas, or establish terms and conditions for non-motorized travel within the park in order to protect visitors, employees, or park resources.

(iii) Dog sledding or ski-joring is prohibited.

(16) *May I operate a snowplane in Yellowstone?* The operation of a snowplane in Yellowstone is prohibited.

(17) *Is violating any of the provisions of this section prohibited?* Violating any of the terms, conditions or requirements of paragraphs (l)(1) through (l)(16) of this section is prohibited. Each occurrence of non-compliance with these regulations is a separate violation.

3. Amend § 7.21 by revising paragraph (a) to read as follows:

§ 7.21 John D. Rockefeller, Jr., Memorial Parkway.

(a)(1) *What is the scope of this regulation?* The regulations contained in paragraphs (a)(2) through (a)(17) of this section are intended to apply to the use of recreational and commercial snowmobiles. Except where indicated, paragraphs (a)(2) through (a)(17) do not apply to non-administrative snowmobile or snowcoach use by NPS, contractor or concessioner employees who live or work in the interior of Yellowstone, or other non-recreational users authorized by the Superintendent.

(2) *What terms do I need to know?* All the terms in § 7.13(l)(2) of this part apply to this section. This paragraph (a) also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(3) *May I operate a snowmobile in the Parkway?* (i) You may operate a

snowmobile in the Parkway in compliance with use limits, guiding requirements, operating hours and dates, equipment, and operating conditions established pursuant to this section. The Superintendent may establish additional operating conditions and shall provide notice of those conditions in accordance with § 1.7(a) of this chapter or in the **Federal Register**.

(ii) The authority to operate a snowmobile in the Parkway established in paragraph (a)(3)(i) of this section is in effect only through the winter season 2006–2007.

(4) *May I operate a snowcoach in the Parkway?* (i) Commercial snowcoaches may be operated in the Parkway under a concessions contract. Non-commercial snowcoaches may be operated if authorized by the Superintendent. Snowcoach operation is subject to the conditions stated in the concessions contract and all other conditions identified in this section.

(ii) Beginning with the winter of 2005–2006, all non-historic snowcoaches must meet NPS air emissions requirements. These requirements are the applicable EPA emission standards for the vehicle at the time it was manufactured.

(iii) All critical emission-related exhaust components (as defined in 40 CFR 86.004–25(b)(3)(iii) through (v)) must be functioning properly. Malfunctioning critical emission-related components must be replaced with the original equipment manufacturer (OEM) component, where possible. Where OEM parts are not available, after-market parts may be used. In general, catalysts that have exceeded their useful life must be replaced unless the operator can demonstrate the catalyst is functioning properly.

(iv) Modifying or disabling a snowcoach's original pollution control equipment is prohibited except for maintenance purposes.

(v) Individual snowcoaches may be subject to periodic inspections to determine compliance with the requirements of paragraphs (a)(4)(ii) through (a)(4)(iv) of this section.

(vi) Historic snowcoaches (Bombardier snowcoaches manufactured in 1983 or earlier) are not required to meet air emissions restrictions.

(vii) The authority to operate a snowcoach in the Parkway established in paragraph (a)(4)(i) of this section is in effect only through the winter season of 2006–2007.

(5) *Must I operate a certain model of snowmobile?* Only commercially available snowmobiles that meet NPS air and sound requirements may be operated in the Parkway. The Superintendent will approve snowmobile makes, models and year of manufacture that meet those restrictions. Any snowmobile model not approved by the superintendent may not be operated in the Parkway.

(6) *How will the Superintendent approve snowmobile makes, models, and year of manufacture for use in the Parkway?* (i) Beginning with the 2005 model year, all snowmobiles must be certified under 40 CFR part 1051, to a Family Emission Limit no greater than 15 g/kW-hr for hydrocarbons and to a Family Emission Limit no greater than 120 g/kW-hr for carbon monoxide.

(A) 2004 model year snowmobiles may use measure air emissions levels (official emission results with no deterioration factors applied) to comply with the air emission limits specified in paragraph (a)(6)(i) of this section.

(B) Snowmobiles manufactured prior to the 2004 model year may be operated only if they have shown to have air emissions no greater than the restrictions identified in paragraph (a)(6)(i) of this section.

(C) The snowmobile test procedures specified by EPA (40 CFR parts 1051 and 1065) shall be used to measure air emissions from model year 2004 and later snowmobiles. Equivalent procedures may be used for earlier model years.

(ii) For sound emissions snowmobiles must operate at or below 73dB(A) as measured at full throttle according to Society of Automotive Engineers J192 test procedures (revised 1985). Snowmobiles may be tested at any barometric pressure equal to or above 23.4 inches Hg uncorrected.

(iii) These air and sound emissions restrictions shall not apply to snowmobiles originating in the Targhee National Forest and traveling on the Grassy Lake Road to Flagg Ranch. However these snowmobiles may not travel further into the Parkway than Flagg Ranch unless they meet the air and sound emissions and all other requirements of this section.

(iv) The Superintendent may prohibit entry into the Parkway of any snowmobile that has been modified in a manner that may adversely affect air or sound emissions.

(7) *Where must I operate my snowmobile in the Parkway?* You must operate your snowmobile only upon designated oversnow routes established within the Parkway in accordance with § 2.18(c) of this chapter. The following oversnow routes are so designated for snowmobile use through the winter season of 2006–2007:

(i) The Continental Divide Snowmobile Trail (CDST) along U.S. Highway 89/287 from the southern boundary of the Parkway north to the Snake River Bridge.

(ii) Along U.S. Highway 89/287 from the Snake River Bridge to the northern boundary of the Parkway.

(iii) Grassy Lake Road from Flagg Ranch to the western boundary of the Parkway.

(iv) The Superintendent may open or close these routes, or portions thereof, for snowmobile travel after taking into consideration the location of wintering wildlife, appropriate snow cover, public safety and other factors. Notice of such opening or closing shall be provided by one or more of the methods listed in § 1.7(a) of this chapter.

(v) This paragraph (a)(7) also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(vi) Maps detailing the designated oversnow routes will be available from Park Headquarters.

(8) *What routes are designated for snowcoach use?* (i) Authorized snowcoaches may only be operated through the winter season of 2006–2007 on the route designated for snowmobile use in paragraph (a)(7)(ii) of this section. No other routes are open to snowcoach use.

(ii) The Superintendent may open or close this oversnow routes, or portions thereof, or designate new routes for snowcoach travel after taking into consideration the location of wintering wildlife, appropriate snow cover, public safety, and other factors. Notice of such opening or closing shall be provided by one or more of the methods listed in § 1.7(a) of this chapter.

(iii) This paragraph (a)(8) also applies to non-administrative snowcoach use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(9) *Must I travel with a commercial guide while snowmobiling in the Parkway, and what other guiding requirements apply?* All recreational snowmobile operators using the oversnow route along U.S. Highway 89/287 from Flagg Ranch to the northern boundary of the parkway must be accompanied by a commercial guide. A guide is not required in other portions of the Parkway.

(i) Guided snowmobile parties must travel in a group of no more than 11 snowmobiles, including the guide.

(ii) Guided snowmobile parties must travel together within a maximum of one-third mile of the first snowmobile in the group.

(10) *Are there limits established for the numbers of snowmobiles permitted to operate in the Parkway each day?* (i) The numbers of snowmobiles allowed to operate in the Parkway each day will be limited to a certain number per road segment. The limits are listed in the following table:

TABLE 1 TO § 7.21.—DAILY SNOWMOBILE ENTRY LIMITS

Park entrance/road segment	Total number of snowmobile entrance passes
(ii) GTNP and the Parkway—Total Use on CDST*	50
(iii) Grassy Lake Road (Flagg-Ashton Road)	50
(iv) Flagg Ranch to Yellowstone South Entrance	220

*The Continental Divide Snowmobile Trail lies within both GTNP and the Parkway. The 50 daily snowmobile use limit applies to total use on this trail in both parks.

(11) *When may I operate my snowmobile or snowcoach?* The Superintendent will determine operating hours and dates. Except for emergency situations, changes to operating hours may be made annually and the public will be notified of those changes through publication in the **Federal Register** and through one or more of the methods listed in § 1.7(a) of this chapter.

(12) *What other conditions apply to the operation of oversnow vehicles?* (i) The following are prohibited:

(A) Idling an oversnow vehicle more than 5 minutes at any one time.

(B) Driving an oversnow vehicle while the operator's motor vehicle license or privilege is suspended or revoked.

(C) Allowing or permitting an unlicensed driver to operate an oversnow vehicle.

(D) Driving an oversnow vehicle in willful or wanton disregard for the safety of persons, property, or parkway resources or otherwise in a reckless manner.

(E) Operating an oversnow vehicle without a lighted white headlamp and red taillight.

(F) Operating an oversnow vehicle that does not have brakes in good working order.

(G) The towing of persons on skis, sleds or other sliding devices by oversnow vehicles, except in emergency situations.

(ii) The following are required:

(A) All oversnow vehicles that stop on designated routes must pull over to the far right and next to the snow berm. Pullouts must be utilized where available and accessible. Oversnow vehicles may not be stopped in a hazardous location or where the view might be obscured, or operating so slowly as to interfere with the normal flow of traffic.

(B) Oversnow vehicle drivers must possess a valid motor vehicle operator's license. The license must be carried by the driver at all times. A learner's permit does not satisfy this requirement.

(C) Equipment sleds towed by a snowmobile must be pulled behind the snowmobile and fastened to the snowmobile with a rigid hitching mechanism.

(D) Snowmobiles must be properly registered and display a valid registration from the United States or Canada.

(iii) The Superintendent may impose other terms and conditions as necessary to protect parkway resources, visitors, or employees. The public will be notified of any changes through one or more methods listed in § 1.7(a) of this chapter.

(iv) This paragraph (a)(12) also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(13) *What conditions apply to alcohol use while operating an oversnow vehicle?* In addition to the regulations in 36 CFR 4.23, the following conditions apply:

(i) Operating or being in actual physical control of an oversnow vehicle is prohibited when the driver is under 21 years of age and the alcohol concentration in the driver's blood or breath is 0.02 grams or more of alcohol per 100 milliliters of blood or 0.02 grams or more of alcohol per 210 liters of breath.

(ii) Operating or being in actual physical control of an oversnow vehicle is prohibited when the driver is a snowmobile guide or a snowcoach driver and the alcohol concentration in the operator's blood or breath is 0.04 grams or more of alcohol per 100 milliliters of blood or 0.04 grams or more of alcohol per 210 liters of breath.

(iii) This paragraph (a)(13) also applies to non-administrative snowmobiles use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(14) *Do other NPS regulations apply to the use of oversnow vehicles?* (i) The use of oversnow vehicles is not subject to §§ 2.18(d), (e), and 2.19(b) of this chapter.

(ii) This paragraph (a)(14) also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users as authorized by the Superintendent.

(15) *Are there any forms of non-motorized oversnow transportation allowed in the parkway?* (i) Non-motorized travel consisting of skiing, skating, snowshoeing, or walking is permitted unless otherwise restricted pursuant to this section or other provisions of 36 CFR Part 1.

(ii) The Superintendent may designate areas of the Parkway as closed, reopen such areas, or establish terms and conditions for non-motorized travel within the Parkway in order to protect visitors, employees, or park resources.

(iii) Dog sledding or ski-joring is prohibited.

(16) *May I operate a snowplane in the Parkway?* The operation of a snowplane in the Parkway is prohibited.

(17) *Is violating any of the provisions of this section prohibited?* Violating any of the terms, conditions or requirements of paragraphs (a)(1) through (a)(16) of this section is prohibited. Each occurrence of non-compliance with these regulations is a separate violation.

* * * * *

4. Amend § 7.22 by revising paragraph (g) to read as follows:

§ 7.22 Grand Teton National Park.

* * * * *

(g)(1) *What is the scope of this regulation?* The regulations contained in paragraphs (g)(2) through (g)(20) of this section are intended to apply to the use of recreational and commercial snowmobiles. Except where indicated, paragraphs (g)(2) through (g)(20) do not apply to non-administrative snowmobile or snowcoach use by NPS, contractor or concessioner employees who live or work in the interior of

Yellowstone, or other non-recreational users authorized by the Superintendent.

(2) *What terms do I need to know?* All the terms in § 7.13(l)(1) of this part apply to this section. This paragraph (g) also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(3) *May I operate a snowmobile in the Grand Teton National Park?* (i) You may operate a snowmobile in Grand Teton National Park in compliance with use limits, operating hours and dates, equipment, and operating conditions established pursuant to this section. The Superintendent may establish additional operating conditions and provide notice of those conditions in accordance with § 1.7(a) of this chapter or in the **Federal Register**.

(ii) The authority to operate a snowmobile in Grand Teton National Park established in paragraph (g)(3)(i) of this section is in effect only through the winter season of 2006–2007.

(4) *May I operate a snowcoach in Grand Teton National Park?* It is prohibited to operate a snowcoach in Grand Teton National Park except as authorized by the superintendent.

(5) *Must I operate a certain model of snowmobile in the park?* Only commercially available snowmobiles that meet NPS air and sound emissions requirements may be operated in the park. The Superintendent will approve snowmobile makes, models, and year of manufacture that meet those requirements. Any snowmobile model not approved by the Superintendent may not be operated in the park.

(6) *How will the Superintendent approve snowmobile makes, models, and year of manufacture for use in Grand Teton?* (i) Beginning with the 2005 model year, all snowmobiles must be certified under 40 CFR part 1051, to a Family Emission Limit no greater than 15 g/kW-hr for hydrocarbons and to a Family Emission Limit no greater than 120 g/kW-hr for carbon monoxide.

(A) 2004 model year snowmobiles may use measured air emissions levels (official emission results with no deterioration factors applied) to comply with the air emission limits specified in paragraph (g)(6)(i) of this section.

(B) Snowmobiles manufactured prior to the 2004 model year may be operated only if they have shown to have air emissions no greater than the requirements identified in paragraph (g)(6)(i) of this section.

(C) The snowmobile test procedures specified by EPA (40 CFR Parts 1051 and 1065) shall be used to measure air emissions from model year 2004 and later snowmobiles. Equivalent procedures may be used for earlier model years.

(ii) For sound emissions snowmobiles must operate at or below 73dB(A) as measured at full throttle according to Society of Automotive Engineers J192 test procedures (revised 1985). Snowmobiles may be tested at any barometric pressure equal to or above 23.4 inches Hg uncorrected.

(iii) These air and sound emissions requirements shall not apply to snowmobiles while in use to access lands authorized by paragraphs (g)(16) and (g)(18) of this section.

(iv) The Superintendent may prohibit entry into the park of any snowmobile that has been modified in a manner that may adversely affect air or sound emissions.

(7) *Where must I operate my snowmobile in the park?* You must operate your snowmobile only upon designated oversnow routes established within the park in accordance with § 2.18(c) of this chapter. The following oversnow routes are so designated for snowmobile use through the winter season 2006–2007:

(i) The frozen water surface of Jackson Lake for the purposes of ice fishing only. Those persons accessing Jackson Lake for ice fishing must possess a valid Wyoming fishing license and the proper fishing gear. Snowmobiles may only be used to travel to and from fishing locations on the lake.

(ii) The Continental Divide Snowmobile Trail along U.S. 26/287 from Moran Junction to the eastern park boundary and along U.S. 89/287 from Moran Junction to the north park boundary.

(iii) The Superintendent may open or close these routes, or portions thereof, for snowmobile travel, and may establish separate zones for motorized and non-motorized use on Jackson Lake, after taking into consideration the location of wintering wildlife, appropriate snow cover, public safety and other factors. Notice of such opening or closing shall be provided by one or more of the methods listed in § 1.7(a) of this chapter.

(iv) This paragraph (g)(7) also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(v) Maps detailing the designated oversnow routes will be available from Park Headquarters.

(8) *Must I travel with a commercial guide while snowmobiling in Grand Teton National Park?* You will not be required to use a guide while snowmobiling in Grand Teton National Park.

(9) *Are there limits established for the numbers of snowmobiles permitted to operate in the park each day?* The numbers of snowmobiles allowed to operate in the park each day will be limited to a certain number per road segment or location. The snowmobile limits are listed in the following table:

TABLE 1 TO § 7.22.—DAILY SNOWMOBILE LIMITS

Road segment/location	Total number of snowmobiles
(i) GTNP and the Parkway—Total Use on CDST*	50
(ii) Jackson Lake	40

*The Continental Divide Snowmobile Trail lies within both GTNP and the Parkway. The 50 daily snowmobile use limit applies to total use on this route in both parks.

(10) *When may I operate my snowmobile?* The Superintendent will determine operating hours and dates. Except for emergency situations, changes to operating hours or dates may be made annually and the public will be notified of those changes through one or more of the methods listed in § 1.7(a) of this chapter

(11) *What other conditions apply to the operation of oversnow vehicles?* (i) The following are prohibited:

(A) Idling an oversnow vehicle more than 5 minutes at any one time.

(B) Driving an oversnow vehicle while the operator's motor vehicle license or privilege is suspended or revoked.

(C) Allowing or permitting an unlicensed driver to operate an oversnow vehicle.

(D) Driving an oversnow vehicle in willful or wanton disregard for the

safety of persons, property, or park resources or otherwise in a reckless manner.

(E) Operating an oversnow vehicle without a lighted white headlamp and red taillight.

(F) Operating an oversnow vehicle that does not have brakes in good working order.

(G) The towing of persons on skis, sleds or other sliding devices by oversnow vehicles.

(ii) The following are required:

(A) All oversnow vehicles that stop on designated routes must pull over to the far right and next to the snow berm. Pullouts must be utilized where available and accessible. Oversnow vehicles may not be stopped in a hazardous location or where the view might be obscured, or operating so slowly as to interfere with the normal flow of traffic.

(B) Oversnow vehicle drivers must possess a valid motor vehicle operator's license. The license must be carried by the driver at all times. A learner's permit does not satisfy this requirement.

(C) Equipment sleds towed by a snowmobile must be pulled behind the snowmobile and fastened to the snowmobile with a rigid hitching mechanism.

(D) Snowmobiles must be properly registered and display a valid registration from the United States or Canada.

(iii) The Superintendent may impose other terms and conditions as necessary to protect park resources, visitors, or employees. The public will be notified of any changes through one or more methods listed in § 1.7(a) of this chapter.

(iv) This paragraph (g)(11) also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(12) *What conditions apply to alcohol use while operating an oversnow vehicle?* In addition to the regulations in 36 CFR 4.23, the following conditions apply:

(i) Operating or being in actual physical control of an oversnow vehicle is prohibited when the driver is under 21 years of age and the alcohol concentration in the driver's blood or breath is 0.02 grams or more of alcohol per 100 milliliters or blood or 0.02 grams or more of alcohol per 210 liters of breath.

(ii) Operating or being in actual physical control of an oversnow vehicle is prohibited when the driver is a snowmobile guide or a snow coach operator and the alcohol concentration in the driver's blood or breath is 0.04 grams or more of alcohol per 100 milliliters of blood or 0.04 grams or more of alcohol per 210 liters of breath.

(iii) This paragraph (g)(12) also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(13) *Do other NPS regulations apply to the use of oversnow vehicles?* The use of oversnow vehicles in Grand Teton is not subject to §§ 2.18(d) and (e) and 2.19(b) of this chapter.

(14) *Are there any forms of non-motorized oversnow transportation allowed in the park?* (i) Non-motorized travel consisting of skiing, skating, snowshoeing, or walking is permitted unless otherwise restricted pursuant to this section or other provisions of 36 CFR Part 1.

(ii) The Superintendent may designate areas of the park as closed, reopen such areas, or establish terms and conditions for non-motorized travel within the park in order to protect visitors, employees, or park resources.

(iii) Dog sledding or ski-joring is prohibited.

(15) *May I operate a snowplane in the park?* The operation of a snowplane in Grand Teton National Park is prohibited.

(16) *May I continue to access public lands via snowmobile through the park?* Reasonable and direct access, via snowmobile, to adjacent public lands will continue to be permitted on designated routes through the park. Requirements established in this section related to snowmobile operator age, guiding and licensing do not apply on these oversnow routes. The following routes only are designated for access via snowmobile to public lands:

(i) From the parking area at Shadow Mountain directly along the unplowed portion of the road to the east park boundary.

(ii) Along the unplowed portion of the Ditch Creek Road directly to the east park boundary.

(17) *For what purpose may I use the routes designated in paragraph (g)(16) of this section?* You may use those routes designated in paragraph (g)(16) of this section only to gain direct access to public lands adjacent to the park boundary.

(18) *May I continue to access private property within or adjacent to the park via snowmobile?* Until such time as the United States takes full possession of an inholding in the park, the Superintendent may establish reasonable and direct access routes via snowmobile, to such inholding, or to private property adjacent to park boundaries for which other routes or means of access are not reasonably available. Requirements established in this section related to air and sound emissions, snowmobile operator age, licensing, and guiding do not apply on these oversnow routes. The following routes are designated for access to properties within or adjacent to the park:

(i) The unplowed portion of Antelope Flats Road off U.S. 26/89 to private lands in the Craighead Subdivision.

(ii) The unplowed portion of the Teton Park Road to the piece of land commonly referred to as the "Clark Property".

(iii) From the Moose-Wilson Road to the land commonly referred to as the "Barker Property".

(iv) From the Moose-Wilson Road to the land commonly referred to as the "Wittimer Property".

(v) From the Moose-Wilson Road to those two pieces of land commonly referred to as the "Halpin Properties".

(vi) From the south end of the plowed sections of the Moose-Wilson Road to that piece of land commonly referred to as the "JY Ranch".

(vii) From Highway 26/89/187 to those lands commonly referred to as the "Meadows", the "Circle EW Ranch", the "Moulton Property", the "Levinson Property" and the "West Property".

(viii) From Cunningham Cabin pullout on U.S. 26/89 near Triangle X to the piece of land commonly referred to as the "Lost Creek Ranch".

(ix) Maps detailing designated routes will be available from Park Headquarters.

(19) *For what purpose may I use the routes designated in paragraph (g)(18) of this section?* Those routes designated in paragraph (g)(18) of this section are only to access private property within or directly adjacent to the park boundary. Use of these roads via snowmobile is authorized only for the landowners and their representatives or guests. Use of these roads by anyone else or for any other purpose is prohibited.

(20) *Is violating any of the provisions of this section prohibited?* Violating any of the terms, conditions or requirements of paragraphs (g)(1) through (g)(19) of this section is prohibited. Each occurrence of non-compliance with these regulations is a separate violation.

Dated: August 27, 2004.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–20021 Filed 9–3–04; 8:45 am]

BILLING CODE 4312–CT–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1228

[3095–AB31]

Records Center Facility Standards

AGENCY: National Archives and Records Administration (NARA).

ACTION: Proposed rule.

SUMMARY: NARA proposes to modify its facility standards for records storage facilities that house Federal records to clarify requirements relating to design or certification of multiple story facilities and fire detection and protection systems; to revise certain requirements relating to fire-ratings of roofs, building columns, and fire barrier walls; and to clarify the application of other requirements. We are proposing these changes to address records center industry concerns identified in the 2003 Report to Congress on Costs and Benefits of Federal Regulations. The proposed rule will affect commercial records storage facilities that store Federal records and applies to all agencies, including NARA, that establish and operate records centers, and to agencies that contract for the services of commercial records storage facilities.

DATES: Comments are due by November 8, 2004.

ADDRESSES: You may submit comments, identified by RIN 3095–AB31, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail: comments@nara.gov.* Include RIN 3095–AB31 in the subject line of the message.
- *Fax:* 301–837–0319.
- *Mail:* Regulation Comment Desk, Room 4100, 8601 Adelphi Rd., College Park, MD 20740–6001.
- *Hand Delivery/Courier:* NPOL, Room 4100, 8601 Adelphi Rd., College Park, MD 20740–6001.

FOR FURTHER INFORMATION CONTACT: Nancy Allard at telephone number 301–837–1477, or fax number 301–837–0319.

SUPPLEMENTARY INFORMATION:

A. Background to This Proposed Rule

NARA conducted a rulemaking in 1999 that culminated with publishing a final rule "Agency Records Centers" (RIN 3095–AA81) on December 2, 1999, with an effective date of January 3, 2000 (see 64 FR 67634). The regulation was codified as 36 CFR part 1228, subpart K. This regulation was nominated as a possible candidate for reform in the 2003 Report to Congress on Costs and Benefits of Federal Regulations. The nominations identified six provisions of subpart K that were of particular concern: §§ 1228.228(b), 1228.230(b), 1228.230(e), 1228.230(i), 1228.230(l) and 1228.230(s). With the assistance of Congressional staff, NARA engaged in extensive discussions with the Professional Records and Information Services Management (PRISM) International, the records center industry association to which many of the 497 nominators belong, identified specific concerns with those six provisions. The changes reflected in this proposed rule represent a joint agreement between NARA and PRISM to mitigate most of those concerns, as well as additional provisions that were identified during the follow-up discussion with PRISM to clarify those provisions.

As we discussed extensively in the 1999 rulemaking, Federal records provide essential documentation of the Federal Government's policies and transactions and protect rights of individuals. The Government has an obligation to protect and preserve these records for their entire retention period, even if that retention period is only a few years, as is the case with IRS income tax returns or invoice payments. NARA believes that records storage facilities should be structurally sound, protect against unauthorized access, and protect against fire and water damage to the records, whether the records are temporary or permanent. This rulemaking continues to reflect that belief.

B. Discussion of Proposed Changes

Following is a section-by-section discussion of the substantive proposed changes and the supporting reasons for these changes.

Section 1228.226 (Definitions)

- *Proposed change: Existing records storage facility* and *new records storage facility* were updated to reflect the date of the final rule resulting from this rulemaking. *Records storage area* was modified to clarify that the walls are fire barrier walls, not fire walls.

Section 1228.228(a) (Roof Requirement)

- *Proposed change:* The existing provision requires that roofs (and other building elements) be constructed with non-combustible materials and building elements. Existing records storage facilities may obtain a waiver until October 1, 2009, if the facility has a fire suppression system specifically designed to mitigate this hazard. The proposed rule would allow roof elements to be constructed with combustible materials if installed in accordance with local building codes and if roof elements are protected by a properly installed, properly maintained automatic sprinkler system. The waiver process for other building elements remains in place.
- *Discussion of proposed change:* In identifying this as one of the six problematic provisions, PRISM stated that the requirement that roof elements be constructed with non-combustible materials would disqualify many, if not most, commercial storage facilities from competing fairly for contracts to store Federal records. PRISM noted a properly installed and maintained automatic sprinkler system designed to protect roof elements provides ample protection. PRISM further noted such construction is recognized by all of the major consensus-based building codes. We independently note that wood framed roofs are frequently used in new construction in high seismic risk zones. We are making the recommended change for these reasons.

Section 1228.228(b) (Certification—Multi-Story Facilities)

- *Proposed change:* The existing paragraph requires that a multi-story facility be designed or "certified" by a licensed fire protection engineer and a civil/structural engineer. We propose to restate the certification requirement to state more accurately what is required, *i.e.*, reviews documented by professional opinions under seal that the fire resistance of separating floors is at least 4 hours and that there are no obvious structural weaknesses that would indicate a high potential for structural catastrophic collapse under fire conditions.
- *Discussion of proposed change:* Industry concerns centered on the word "certify," and whether any professional engineer would be willing to provide a certification. We recognize that "certified" may be read as requiring more than we intended, which is that the engineer(s) provide a professional opinion under seal. For new construction, NARA can accept the seals on the construction drawings as adequate proof because current model building codes address structural integrity under fire conditions. For buildings constructed more than 10 years ago, code compliance at time of construction would not guarantee that the building complies with the current codes. Therefore, the proposed rule specifies what must be addressed in the professional letter of opinion. In reviewing and commenting on this provision, please note that catwalks are

not considered to create a "multi-storied" building.

Section 1228.228(d) (Building Code Protection Against Natural Disaster)

- *Proposed change:* The existing provision requires that the facility be designed in accordance with regional building codes to provide protection from building collapse or failure of essential equipment from natural disasters. We are modifying the provision to include also applicable state or local building codes.
- *Discussion of proposed change:* PRISM suggested the change as a clarification. Although § 1228.234 provides a procedure for applying conflicting provisions which would address state and local building codes, we note that local or state building codes may address a specific local common natural disaster that the regional code does not. We believe that it is helpful to add these other codes for this reason.

Section 1228.228(i) (Storage Shelving)

- *Proposed change:* We propose to add racking systems in the standard for records storage shelving and to add state and local building code requirements for seismic bracing. The existing provision refers to "storage shelving" and "steel shelving" and states that they must provide seismic bracing that meets the requirements of the applicable regional building codes.

Discussion of proposed change: PRISM recommended the clarifications, noting that in industry terminology, "shelving systems" are used in low-density environments, while "racking systems" are used in high-density environments. The existing NARA standard is intended to ensure that the shelving equipment has proper seismic bracing as required by code and that the weight of the records on the equipment does not cause its collapse. We view this change as a clarification of terminology that will not increase costs for records centers that use racking systems. As we stated in our discussion of the proposed change to § 1228.228(d), it is appropriate to add the clarification on use of state and local codes relating to seismic bracing.

Section 1228.228(n)(1) (Mechanical Equipment in Records Storage Areas)

- *Proposed change:* We propose to modify this provision, which applies only to new facilities, to allow installation of material handling and conveyance equipment that use thermal breakers on the motor.
- *Discussion of proposed change:* Some material handling and conveyance equipment used in high density storage areas operate with motors in excess of 1 horsepower (HP). These machines are needed to lift pallet loads to higher catwalk levels. In the existing regulation, NARA prohibits equipment that has motors rated in excess of 1 HP for new facilities because such motors can overheat to the point of causing a fire. We propose to modify this prohibition to allow material handling and conveyance equipment that use thermal breakers. Thermal breakers are readily available, low cost, options for such equipment, and adding this exception will benefit commercial records centers. We note again that this provision applies only to new facilities (*i.e.*, facilities that become records centers on or after the effective date of any final rule resulting from this rulemaking). There is no prohibition on such equipment in existing facilities.

Section 1228.228(n)(4) (Requirement for Positive Air Pressure)

- *Proposed change:* We propose to limit the requirement to new facilities that store permanent Federal records. The existing regulation applies the requirement to all new facilities.
- *Discussion of proposed change:* The purpose of the original provision was to limit degradation of long-term records because of exposure to exhaust fumes. We agree with PRISM that the requirement should be limited to permanent records.

Section 1228.230(a) (Certification—Fire Detection and Protection Systems)

- *Proposed change:* The paragraph has been substantively revised to clarify the requirement to "certify" a fire detection and protection system. The existing requirement simply states that the system must be designed or certified by a licensed fire protection engineer (FPE). The proposed paragraph (a) specifies that the FPE must furnish a report under professional seal that provides specific information.
- *Discussion of proposed change:* Industry concerns centered on the word "certify," and what the FPE was being asked to do. The original wording of this paragraph intended that the fire detection and protection system be designed specifically for the records storage space by a licensed fire protection engineer or, if the system was designed and installed by a NICET technician or other sprinkler contractor, that the system be reviewed by a licensed fire protection engineer to ensure that the installation would provide appropriate protection to the contents (*i.e*, the records stored). The proposed language clarifies this intent.

Section 1228.230(b) (Interior Walls)

- *Proposed change:* We propose to require that interior walls separating records storage areas from each other and from other storage areas in the building be at least 3-hour fire resistant. In the existing rule, the requirement is for 4-hour fire barrier walls. We have also restated in a clearer manner the requirement that no more than 250,000 cubic feet of Federal records may be stored in a single records storage area.
- *Discussion of proposed change:* While we continue to support the National Fire Protection Association (NFPA) 232–2000 standard, which specifies 4-hour fire barrier walls to separate records storage areas from each other and from other storage areas in the building, PRISM identified this requirement as a major cost issue for commercial records centers, particularly for centers that are built higher than 24 feet because it is necessary to go into the foundation if the wall is 25 feet tall or taller. After a careful review of the data provided by PRISM, we conclude that changing the requirement from a 4-hour fire barrier wall to a 3-hour fire barrier wall will retain our primary goal of resisting the spread of fire between storage areas at a substantial cost savings for records center operators.

We have not modified the requirement that no more than 250,000 cubic feet of Federal records be stored in a single records storage area. Our language attempts to clarify that we are not setting a NARA limit on the number of non-Federal records than can be stored in a single records storage area. Although this is one of the six provisions with which industry had significant concern, we continue to believe this is an appropriate limit for minimizing the loss of Federal records to an uncontrolled fire. We discuss this issue further in the Initial Regulatory Flexibility Analysis.

Section 1228.230(e) (Fire Resistive Rating of Roof)

- *Proposed change:* We propose to delete the requirement that new facilities must have a roof with a maximum fire-resistive rating of one hour. We also propose to allow protection of the roof by an automatic sprinkler system designed, installed, and maintained in accordance with NFPA 13, Standard for the Installation of Sprinkler Systems, as an alternative to the requirement for a minimum fire resistive rating of ½ hour.
- *Discussion of proposed change:* This change is in keeping with our proposed change to § 1228.228(a).

Section 1228.230(i) (Building Columns)

• *Proposed change:* We propose to revise the fire resistance requirement for building columns in records storage areas from 2 hours for existing facilities and 4 hours for new facilities to 1 hour or protected in accordance with NFPA 13 for all facilities.

• *Discussion of proposed change:* According to PRISM, the existing provision would impose insurmountable costs on most commercial storage facilities, which, in general, use columns (including exposed steel) that are not fire rated. The proposed modification of this provision would bring it in line with NFPA 13, the standard for the installation of automatic sprinkler systems, which requires a one-hour fire rating or sprinkler construction for columns within racking systems. Our fundamental concern remains the protection of the fire suppression sprinkler system itself from collapse, but recognize that the latest versions of NFPA 13 adequately address that issue.

Section 1228.230(l) (Use of Open Flame Equipment)

• *Proposed change:* We propose to allow open flame oil and gas unit heaters or equipment in storage areas if they are installed and used in accordance with NFPA 54, National Fuel Gas Code and IAMPO Uniform Mechanical Code. The existing regulation bans such heaters and equipment.

• *Discussion of proposed change:* A ban on the use of open flame oil and gas unit heaters or equipment would require records centers to install prohibitively expensive central or electric heating systems. The proposed modification would ensure that any open flame units comply with the rigorous standards set forth in NFPA 54, National Fuel Gas Code, and the International Association of Plumbing and Mechanical Officials Uniform Mechanical Code. Under these standards, for example, the heating unit must be at least three feet from any surface and must be equipped with a flame monitor that will shut down the flow of fuel if the flame fails. For other preservation-related reasons, we continue to believe that open flame heaters are inappropriate in archival facilities.

Section 1228.230(s) (Design Intent of Fire Safety Detection and Supression Systems)

• *Proposed change:* We propose to clarify the intent of this paragraph that the fire-safety detection and suppression system be designed to protect against a single ignition and no more than 8 ounces of accelerant.

• *Discussion of proposed change:* The proposed change provides necessary details for design of a fire detection and suppression system, and is based on the procedure used for Underwriter Laboratories (UL) tests.

Section 1228.240(c) (Agency Records Centers)

• *Proposed change:* We propose to remove a provision relating to approval of existing records centers that did not comply with the requirements of the regulations in effect before the January 3, 2000, effective date of the current regulation.

• *Discussion of proposed change:* The provision required agencies to submit their requests by July 1, 2000. We propose to remove the provision as it is no longer needed.

Section 1228.242(a) (Certifying Fire Safety Detection and Supression Systems)

• *Proposed change:* We propose to add Southwest Research Institute as a provider of independent live fire testing; remove a requirement for computer modeling as part of the report furnished by a licensed FPE in lieu of live fire testing or use of a NARA-certified system; and to provide the specific details required in such a report.

• *Discussion of proposed change:* The original wording of § 1228.242(a)(3) required a certification by a licensed FPE that the fire suppression system meets the design intent of § 1228.230(s). "Certification" may be read as requiring more than we intended, which is that the engineer(s) provide a professional opinion under seal. While we continue to see the value of computer modeling as a supplement to live fire testing, we acknowledge that the costs of such modeling may not always be justified in the records center environment. We will continue to use modeling in the archival and Presidential records environments. As proposed by PRISM, we have also added clarifications of the assumptions that may be made in providing the report under professional seal. The detailed assumptions relating to the accelerant reflect the test procedure for live fire testing.

Other Changes

We propose to update the effective date for all provisions that the existing regulation states are effective on January 3, 2000. We believe that the regulation will be easier to apply if there are only two applicable effective dates: the effective date of the final rule resulting from this rulemaking and October 1, 2009, the date by which existing facilities must meet certain provisions.

We also propose to change "may" to "will" in § 1228.236(a) to reflect NARA's intent to always grant a waiver when the conditions in subparagraphs (a)(1) through (a)(3) are met.

C. Initial Regulatory Flexibility Analysis

NARA believes that this proposed rule will affect small businesses that are records storage providers. Therefore we are publishing as an appendix to this proposed rule an initial regulatory flexibility analysis (IRFA) in accordance with the Regulatory Flexibility Act and Executive Order 13272. We specifically invite comments on the IRFA in addition to comments on the proposed rule.

This proposed rule is a significant regulatory action for the purposes of Executive Order 12866 and has been reviewed by the Office of Management and Budget. This regulation does not have any federalism implications.

List of Subjects in 36 CFR Part 1228

Archives and records.

For the reasons set forth in the preamble, NARA proposes to amend Part 1228 of Title 36 of the CFR as follows:

PART 1228—DISPOSITION OF FEDERAL RECORDS

1. The authority citation for part 1228 continues to read as follows:

Authority: 44 U.S.C. chs. 21, 29, and 33.

2. Revise paragraph (b) of § 1228.222 to read:

§ 1228.222 What does this subpart cover?

* * * * *

(b) Except where specifically noted, this subpart applies to all records storage facilities. Certain noted provisions apply only to new records storage facilities established or placed in service on or after [the effective date of the final rule].

3. Amend § 1228.224 by inserting "NFPA 54, National Fuel Gas Code (2002 Edition)" in numerical order in paragraph (c) and adding paragraph (g) to read:

§ 1228.224 Publications incorporated by reference.

* * * * *

(c) * * *

NFPA 54, National Fuel Gas Code (2002 Edition)

* * * * *

(g) *International Association of Plumbing and Mechanical Officials (IAPMO) standards.* The following

IAPMO standard is available from the International Association of Plumbing and Mechanical Officials, 5001 E. Philadelphia Street, Ontario, CA 91761: IAPMO, Uniform Mechanical Code (2003 Edition).

4. Amend § 1228.226 by revising the definitions of "Existing records storage facility", "New records storage facility", and "Records storage area" to read:

§ 1228.226 Definitions.

* * * * *

Existing records storage facility means any records center or commercial records storage facility used to store records on [the day before the effective date of the final rule] and that has stored records continuously since that date.

* * * * *

New records storage facility means any records center or commercial records storage facility established or converted for use as a records center or commercial records storage facility on or after [the effective date of the final rule].

* * * * *

Records storage area means the area intended for long-term storage of records that is enclosed by four fire barrier walls, the floor, and the ceiling.

* * * * *

5. Amend § 1228.228 by revising paragraphs (a), (b), (d), (g)(1), (h)(1), (i) introductory text, (i)(1), (i)(2), (n)(1), and (n)(4) to read:

§ 1228.228 What are the facility requirements for all records storage facilities?

(a) The facility must be constructed with non-combustible materials and building elements, including walls, columns and floors. Roof elements may be constructed with combustible materials if installed in accordance with local building codes and if roof elements are protected by a properly installed, properly maintained wet-pipe automatic sprinkler system. An agency may request a waiver of this requirement from NARA for an existing records storage facility with combustible building elements to continue to operate until October 1, 2009. In its request for a waiver, the agency must provide documentation that the facility has a fire suppression system specifically designed to mitigate this hazard and that the system meets the requirements of § 1228.230(s). Requests must be submitted to the Director, Space and Security Management Division (NAS), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001.

(b) A facility with two or more stories must be designed or reviewed by a licensed fire protection engineer and civil/structural engineer to avoid catastrophic failure of the structure due to an uncontrolled fire on one of the intermediate floor levels. For new buildings the seals on the construction drawings serve as proof of this review. For existing buildings, this requirement may be demonstrated by a professional letter of opinion under seal by a licensed fire protection engineer that the fire resistance of the separating floor(s) is/(are) at least four hours, and a professional letter of opinion under seal by a licensed civil/structural engineer that there are no obvious structural weaknesses that would indicate a high potential for structural catastrophic collapse under fire conditions.

* * * * *

(d) The facility must be designed in accordance with the applicable state, regional or local building codes (whichever is most stringent) to provide protection from building collapse or failure of essential equipment from earthquake hazards, tornadoes, hurricanes and other potential natural disasters.

* * * * *

(g) * * *

(1) New records storage facilities must meet the requirements in this paragraph (g) [the effective date of the final rule].

* * * * *

(h) * * *

(1) New records storage facilities must meet the requirements in this paragraph (h) [the effective date of the final rule].

* * * * *

(i) The following standards apply to records storage shelving and racking systems:

(1) All storage shelving and racking systems must be designed and installed to provide seismic bracing that meets the requirements of the applicable state, regional and local building code (whichever is most stringent);

(2) Racking systems, steel shelving or other open-shelf records storage equipment must be braced to prevent collapse under full load. Each racking system or shelving unit must be industrial style shelving rated at least 50 pounds per cubic foot supported by the shelf;

* * * * *

(n) * * *

(1) Do not install mechanical equipment, excluding material handling and conveyance equipment that have operating thermal breakers on the motor, containing motors rated in excess of 1 HP within records storage areas (either floor mounted or suspended from roof support structures).

* * * * *

(4) A facility storing permanent records must be kept under positive air pressure, especially in the area of the loading dock. In addition, to prevent fumes from vehicle exhausts from entering the facility, air intake louvers must not be located in the area of the loading dock, adjacent to parking areas or in any location where a vehicle engine may be running for any period of time. Loading docks must have an air supply and exhaust system that is separate from the remainder of the facility.

6. Amend § 1228.230 by revising paragraphs (a), (b), (e), (i), (l), and (s) to read:

§ 1228.230 What are the fire safety requirements that apply to records storage facilities?

(a) The fire detection and protection systems must be designed or reviewed by a licensed fire protection engineer. If the system was not designed by a licensed fire protection engineer, the review requirement is met by furnishing a report under the seal of a licensed fire protection engineer that describes the design intent of the fire detection and suppression system, detailing the characteristics of the system, and describing the specific measures beyond the minimum features required by code that have been incorporated to minimize loss. The report should make specific reference to appropriate industry standards used in the design, such as those issued by the National Fire Protection Association, and any testing or modeling or other sources used in the design.

(b) All interior walls separating records storage areas from each other and from other storage areas in the building must be at least three-hour fire barrier walls. A records storage facility may not store more than 250,000 cubic feet total of Federal records in a single records storage area. When Federal records are combined with other records in a single records storage area, only the Federal records will apply toward this limitation.

* * * * *

(e) The fire resistive rating of the roof must be a minimum of ½ hour for all records storage facilities, or must be protected by an automatic sprinkler system designed, installed, and maintained in accordance with NFPA 13.

* * * * *

(i) Building columns in the records storage areas must be at least 1-hour fire resistant or protected in accordance with NFPA 13.

* * * * *

(l) Open flame (oil or gas) unit heaters or equipment, if used in records storage areas, must be installed or used in the records storage area in accordance with NFPA 54 (2002 Edition), National Fuel Gas Code, and the IAPMO Uniform Mechanical Code (2003 Edition).

* * * * *

(s) All record storage and adjoining areas must be protected by a professionally-designed fire-safety detection and suppression system that is designed to limit the maximum anticipated loss in any single fire event involving a single ignition and no more than 8 ounces of accelerant to a maximum of 300 cubic feet of records destroyed by fire. Section 1228.242 specifies how to document compliance with this requirement.

7. Amend § 1228.232 by revising the introductory text of paragraph (b) and paragraph (c) to read:

§ 1228.232 What are the requirements for environmental controls for records storage facilities?

* * * * *

(b) *Nontextual temporary records.* Nontextual temporary records, including microforms and audiovisual and electronic records, must be stored in records storage space that is designed to preserve them for their full retention period. New records storage facilities that store nontextual temporary records must meet the requirements in this paragraph (b) [the effective date of the final rule]. Existing records storage facilities that store nontextual temporary records must meet the requirements in this paragraph (b) no later than October 1, 2009. At a minimum, nontextual temporary records must be stored in records storage space that meets the requirements for medium term storage set by the appropriate standard in this paragraph (b). In general, medium term conditions as defined by these standards are those that will ensure the preservation of the materials for at least 10 years with little information degradation or loss. Records may continue to be usable for longer than 10 years when stored under these conditions, but with an increasing risk of information loss or degradation with longer times. If temporary records require retention longer than 10 years, better storage conditions (cooler and drier) than those specified for medium term storage will be needed to maintain the usability of these records. The applicable standards are:

* * * * *

(c) *Paper-based permanent, unscheduled and sample/select records.* Paper-based permanent, unscheduled, and sample/select records must be stored in records storage space that provides 24 hour/365 days per year air conditioning (temperature, humidity, and air exchange) equivalent to that required for office space. See ASHRAE Standard 55–1992, Thermal Environmental Conditions for Human Occupancy, and ASHRAE Standard 62–1989, Ventilation for Acceptable Indoor Air Quality, for specific requirements. New records storage facilities that store paper-based permanent, unscheduled, and/or sample/select records must meet the requirement in this paragraph (c) [the effective date of the final rule] Existing storage facilities that store paper-based permanent, unscheduled, and/or sample/select records must meet the requirement in this paragraph (c) no later than October 1, 2009.

* * * * *

8. Amend § 1228.236 by revising the introductory text of paragraph (a) and paragraph (a)(2) to read:

§ 1228.236 How does an agency request a waiver from a requirement in this subpart?

(a) *Types of waivers that will be approved.* NARA will approve exceptions to one of more of the standards in this subpart for:

* * * * *

(2) Existing agency records centers that met the NARA standards in effect prior to January 3, 2000, but do not meet a new standard required to be in place on [the effective date of the final rule].

* * * * *

9. Amend § 1228.240 by revising paragraph (c) to read as follows:

§ 1228.240 How does an agency request authority to establish or relocate records storage facilities?

* * * * *

(c) *Contents of requests for agency records centers.* Requests for authority to establish or relocate an agency records center, or to use an agency records center operated by another agency, must be submitted in writing to the Director, Space and Security Management Division (NAS), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. The request must identify the specific facility and, for requests to establish or relocate the agency's own records center, document compliance with the standards in this subpart. Documentation requirements for § 1228.230(s) are specified in § 1228.242.

* * * * *

10. Amend § 1228.242 by revising paragraphs (a)(2) and (a)(3) to read:

§ 1228.242 What does an agency have to do to certify a fire-safety detection and suppression system?

(a) * * *

(2) A report of the results of independent live fire testing (Factory Mutual, Underwriters Laboratories, Southwest Research Institute, or equivalent); or

(3) A report under seal of a licensed fire protection engineer that:

(i) Describes the design intent of the fire suppression system to limit the maximum anticipated loss in any single fire event involving a single ignition and no more than 8 fluid ounces of petroleum-type hydrocarbon accelerant (such as, for example, heptanes or gasoline) to a maximum of 300 cubic feet of Federal records destroyed by fire. The report need not predict a maximum single event loss at any specific number, but rather should describe the design intent of the fire suppression system. The report may make reasonable engineering and other assumptions such as that the fire department responds within XX minutes (the local fire department's average response time) and promptly commences suppression actions. In addition, any report prepared under this paragraph should assume that the accelerant is saturated in a cotton wick that is 3 inches in diameter and 6 inches long and sealed in a plastic bag and that the fire is started in an aisle at the face of a carton at floor level. Assumptions must be noted in the report;

(ii) Details the characteristics of the system; and

(iii) Describes the specific measures beyond the minimum features required by the applicable building code that have been incorporated to limit destruction of records. The report should make specific references to industry standards used in the design, such as those issued by the National Fire Protection Association, and any testing or modeling or other sources used in the design.

* * * * *

Dated: June 1, 2004.

John W. Carlin,

Archivist of the United States.

Appendix to the Preamble of Proposed Rule, 3095–AB31

Records Center Facility Standards

This appendix contains NARA's initial regulatory flexibility analysis for the above cited proposed rule, as required by the Regulatory Flexibility Act.

Description of the Reasons That Action by the Agency is Being Considered

NARA proposes to modify its records center facility standards for the following reasons:

1. One of the reasons cited in the nomination of the regulation as a candidate for reform was that the regulation had an adverse impact on small businesses. The Office of Advocacy of the Small Business Administration (SBA), in reviewing the nominations, also identified the regulation as a high priority for reform.

2. Our discussions with PRISM International, the trade association for the commercial information management industry which includes commercial records centers, identified areas where the existing regulation was unclear or misinterpreted. PRISM, in the absence of a specific small-business association representing the records center industry, is the organization that best represents the interests of small business records center operators. PRISM International also identified other areas where modification of the NARA requirement would not substantively increase the risk to the records but would accommodate commercial records centers. NARA believes that the clarifications and changes in the proposed rule will enable more commercial records centers to be eligible to store Federal records.

Objectives of, and Legal Basis for, the Proposed Rule

NARA's records center regulations specify the minimum structural, environmental, property, security, and fire safety standards that a records storage facility must meet when the facility is used for the storage of Federal records. Because Federal records provide essential documentation of the Federal Government's policies and transactions and protect rights of individuals, they must be stored in appropriate space to ensure that they remain available for their scheduled life.

The objective of this regulation is to clarify the records center facility standards and modify them, where appropriate, to better enable records centers, particularly those that are small businesses, to be able to offer their services to Federal agencies while ensuring the continued appropriate protection of Federal records stored in off-site facilities.

NARA is authorized, under 44 U.S.C. 2907, to establish, maintain and operate records centers for Federal agencies. NARA is authorized, under 44 U.S.C. 3103, to approve a records center that is maintained and operated by an agency. NARA is also authorized to promulgate standards, procedures, and guidelines to Federal agencies with respect to the storage of their records in commercial records storage facilities. See 44 U.S.C. 2104(a), 2904 and 3102.

Description of and, Where Feasible, an Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

The proposed rule will apply to NARA, to Federal agencies that operate their own records centers, and to any individual commercial records center facilities that a Federal agency uses to store its records. Commercial records centers that meet the appropriate Small Business Administration (SBA) size standard are considered small entities. The size standard covering commercial records centers is North American Industry Classification (NAIC) 493190, $21.5 million in average annual receipts. NARA is unable to provide a reliable estimate of the number of small entities to which the proposed rule will apply for the following reasons:

1. There are 829 small firms in NAIC 493190 according to the SBA. However, NAIC 493190 contains more than records centers. The categories of covered businesses includes automobile dead storage, bulk petroleum storage, lumber storage terminals, and whiskey warehousing, in addition to public and private warehousing and storage businesses. Moreover, not all public and private warehousing and storage businesses are records centers. At present, the General Services Administration's Federal Supply Schedule for Records Management Services (Schedule 36, SIN 51 504) lists 7 small businesses that offer paper records and/or data storage services. Additionally, at least one large records center business is on that schedule. Under Schedule 36, storage facilities must conform to NARA standards.

2. PRISM International, was consulted in an attempt to obtain more precise information on the universe of commercial records centers in the U.S. and the number of such centers that would be classified as small businesses. PRISM noted that the universe of commercial records centers in the U.S. is a difficult question to answer with any degree of accuracy. Using an independent source (Info USA) and querying against SIC Codes 4225–10 and 4226–9902 (which cover records storage businesses and track to NAIC 493190), PRISM received a total count of 907 companies who are identified with these SIC codes. PRISM's own membership of approximately 1,580 businesses, includes 351 commercial records center businesses of which 99 percent appear to meet the SBA small business threshold.

3. We note that there is one dominant large records storage business with 445 record centers worldwide and a presence in all major U.S. markets. We believe that it is reasonable to expect that this firm also has a dominant share of the total commercial records center capacity in the U.S.

Description of the Projected Reporting, Recordkeeping and Other Compliance Requirements for Small Entities

All reporting requirements are placed on Federal agencies, which must secure NARA approval before moving Federal records to a commercial records center. However, we expect that a substantial portion of the reporting requirements would "flow down" to commercial records center operators. To demonstrate compliance with requirements in §§ 1228.228(b) and 1228.230(a) relating to design of facilities with two or more stories and the fire detection and protection system, respectively, the proposed rule offers the records centers an option of obtaining a report under professional seal by a licensed fire protection engineer (both sections) and a licensed civil/structural engineer (§ 1228.228(b)). We believe that the documentation requirements relating to multi-story facilities would apply to a relatively small percentage of small business records centers; we invite comment on this point.

If the records center owner has maintained the facility design records, no special professional skills would be necessary to provide documentation to the contracting agency that the facility meets the NARA standards. If the design records are not available, the center would have need for the services of a licensed Fire Protection Engineer to inspect the facility and prepare a report on a one-time basis. We estimate that the inspection and preparation of a report would take no more than 16 hours total.

All records centers that store Federal records, including commercial records centers operated by small businesses, must comply with the facility requirements in the proposed rule. Certain specific requirements differ for newly constructed facilities and existing facilities. Also, existing facilities have until October 1, 2009, to become compliant with some of these requirements. The facility compliance requirements are found in the proposed §§ 1228.228, 1228.230, and 1228.236.

Other Federal rules which may duplicate, overlap or conflict with the proposed rule. We are not aware of any relevant Federal rules that duplicate, overlap, or conflict with the proposed rule. The Legislative Branch has voluntarily adopted the NARA standards for facilities constructed by the Architect of the Capitol and maintained by the Library of Congress.

Alternatives to the Proposed Rule

As discussed earlier in this appendix, the objective of the NARA regulation is to ensure that Federal records are stored in appropriate space. NARA considered, but did not adopt the following alternatives to this proposed rule:

1. *No regulation.* One alternative would be to replace the existing regulation with a single requirement that agencies must use a records center that complies with NFPA/ANSI 232–2000, *Standard for the Protection of Records.* This is the voluntary consensus standard that applies to records storage facilities (we note that other NFPA standards apply to other types of warehousing). Office of Management and Budget (OMB) Circular A–119 Circular directs agencies to use voluntary consensus standards in lieu of government-unique standards except where inconsistent with law or otherwise impractical. We did not adopt this alternative as it would be more stringent with regard to fire protection issues than the existing NARA records center facility standards (which incorporate most but not all of the NFPA 232 provisions), while not including the environmental and pest control portions of our existing regulation. Based on the industry comments made on the draft *2003 Report to Congress on Costs and Benefits of Federal Regulations* and subsequent dialog with PRISM International, we believe that this alternative would not minimize the economic impact on small business records centers that

want to provide records storage services for Federal agencies. We are unable to quantify the economic impact of this alternative on small business.

2. *Relax the waiver process for small businesses.* The proposed rule addresses the provisions that industry identified in their comments as major obstacles for small businesses. The alternative considered here would be to allow records centers that qualify as small businesses to apply for a waiver from § 1228.228(a)'s requirement for noncombustible roofs, and to have two tiers of requirements in § 1228.230 relating to the fire-resistive rating of building elements. The proposed requirements specified in this proposed rule would apply to small businesses; the existing (January 2000) requirements would be retained for NARA records centers, agency records centers, and commercial records centers that are other than small businesses. We would still make the proposed changes to the sections that are being modified to clarify language (*e.g.*, relating to "FPE certifications," racking systems, and 300 cubic foot limit in § 1228.230(s)), which would apply to all facilities. Because many commercial records centers are small businesses, we felt that this approach would merely add an additional step and paperwork for small businesses. Moreover, the two-tier approach may be confusing to them.

Questions for Comment To Assist Regulatory Flexibility Analysis

1. Please provide comment on any or all of the provisions in the proposed rule with regard to

- The impact of the provision(s) including the benefits and costs, if any, on small business, and
- Other alternatives, if any, NARA should consider, as well as the costs and benefits of those alternatives to small business.

2. We are particularly interested in hearing from existing small business-owned records centers that currently have more than 250,000 cubic feet of existing, unused capacity within a single facility that are interested in providing records storage services to the Federal government.

[FR Doc. 04–20274 Filed 9–3–04; 8:45 am]

BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[RME Docket Number R08–OAR–2004–CO–0002; FRL–7809–3]

Approval and Promulgation of Air Quality Implementation Plans; State of Colorado; Colorado Springs Revised Carbon Monoxide Maintenance Plan and Approval of Related Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to take direct final action approving a State Implementation Plan (SIP) revision submitted by the State of Colorado. On April 12, 2004, the Governor of Colorado submitted a revised maintenance plan for the Colorado Springs carbon monoxide (CO) maintenance area for the CO National Ambient Air Quality Standard (NAAQS). The revised maintenance plan contains a revised transportation conformity budget for the year 2010 and beyond. In addition, the Governor submitted revisions to Colorado's Regulation No. 11 "Motor Vehicle Emissions Inspection Program." EPA is proposing approval of the Colorado Springs CO revised maintenance plan, revised transportation conformity budget, and the revisions to Regulation No. 11. This action is being taken under section 110 of the Clean Air Act. In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the preamble to the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

DATES: Written comments must be received on or before October 7, 2004.

ADDRESSES: Submit your comments, identified by RME Docket Number R08–OAR–2004–CO–0002, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- Agency Website: *http://docket.epa.gov/rmepub/index.jsp* Regional Materials in EDOCKET (RME), EPA's electronic public docket and comment system for regional actions, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- E-mail: *long.richard@epa.gov* and *russ.tim@epa.gov*.
- Fax: (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- Mail: Richard R. Long, Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 999 18th Street, Suite 300, Denver, Colorado 80202–2466.
- Hand Delivery: Richard R. Long, Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:55 p.m., excluding federal holidays. Special arrangements should be made for deliveries of boxed information.

Please see the direct final rule which is located in the Rules Section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Tim Russ, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, phone (303) 312–6479, and e-mail at: *russ.tim@epa.gov*.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations Section of this **Federal Register**.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: August 26, 2004.

Robert E. Roberts,

Regional Administrator, Region VIII.

[FR Doc. 04–20135 Filed 9–3–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 312

[SFUND–2004–0001; FRL–7809–9]

RIN 2050–AF04

Notice of Public Meeting To Discuss Standards and Practices for All Appropriate Inquiries

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: The Environmental Protection Agency (EPA) will hold a public meeting to discuss EPA's proposed rule that would set federal standards and practices for conducting all appropriate inquiries, as required under Sections

101(35)(B)(ii) and (iii) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The proposed rule was published in the **Federal Register** on August 26, 2004 (69 FR 52541) and is available on the EPA website at *http://www.epa.gov/brownfields*. The public meeting will be held on Wednesday, October 20, 2004 in Washington, DC at the times and location specified below.

The purpose of the public meeting is for EPA to listen to the views of stakeholders and the general public on the Agency's proposed standards and practices for all appropriate inquiries. During the public meeting, EPA officials will discuss the proposed rule, as well as accept public comment and input on the proposed rule.

DATES: The public meeting will be held on October 20, 2004 at the EPA East Building, 1201 Constitution Ave., NW. The meeting will be held from 1 p.m. to 3 p.m. e.s.t.

ADDRESSES: The public meeting will be held in Room 1153 of the EPA East Building, 1201 Constitution Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Patricia Overmeyer of EPA's Office of Brownfields Cleanup and Redevelopment at (202) 566–2774 or *overmeyer.patricia@epa.gov*.

SUPPLEMENTARY INFORMATION: The meeting is open to the general public. Interested parties and the general public are invited to participate in the public meeting. Parties wishing to provide their views to EPA on the proposed rule, or to listen to the views of other parties, are encouraged to attend the public meeting. Any person may speak at the public meeting; however, we encourage those planning to give oral testimony to pre-register with EPA. Those planning to speak at the public meeting should notify Patricia Overmeyer or Sven-Erik Kaiser, of EPA's Office of Brownfields Cleanup and Redevelopment, U.S. Environmental Protection Agency (Mail Code 5105T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, no later than October 15, 2004. Patricia Overmeyer can be contacted at (202) 566–2774 or *overmeyer.patricia@epa.gov*. Sven-Erik Kaiser can be contacted at (202) 566–2753 or *kaiser.sven-erik@epa.gov*. If you cannot pre-register, you may sign up at the door one hour before the start of the meeting in Washington, DC on October 20, 2004. Oral testimony will be limited to 7 minutes per participant. Any member of the public may file a written statement in addition to, or in lieu of, making oral testimony. A verbatim transcript of the hearing and any written statements received by EPA at the public meeting will be made available at the OSWER Docket and on the EDOCKET website, at the addresses provided below. If you plan to attend the public hearing and need special assistance, such as sign language interpretation or other reasonable accommodations, contact Patricia Overmeyer or Sven-Erik Kaiser, at the above e-mail addresses or phone numbers. Members of the public will have to show photo identification to enter the building. Attendees are encouraged to arrive at least 15 minutes prior to the start of the meeting to allow sufficient time for security screening.

Interested parties not able to attend the public meeting on October 20, 2004 may submit written comments to the Agency. All written comments must be submitted to EPA in compliance with the instructions that will be provided in the preamble to the proposed rule. The instructions are summarized below.

Parties wishing to comment on the proposed rule may submit written comments to EPA. Submit your written comments, identified by Docket ID No. SFUND–2004–0001, by one of the following methods:

1. Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

2. Agency Website: *http://www.epa.gov/edocket*. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

3. E-mail: Comments may be sent by electronic mail to *superfund.docket@epa.gov*, Attention Docket ID No. SFUND–2004–0001.

4. Mail: Send comments to the OSWER Docket, Environmental Protection Agency, Mail Code: 5305T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, Attention Docket ID No. SFUND–2004–0001. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St. NW., Washington, DC 20503.

5. Hand Delivery: Deliver your comments to the EPA Docket Center, EPA West Building, Room B102, 1301 Constitution Ave. NW., Washington, DC, Attention Docket ID No. SFUND–2004–0001. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. SFUND–2004–0001. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the federal regulations.gov Web sites are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102).

Dated: August 31, 2004.

Linda Garczynski,

Director, Office of Brownfields Cleanup and Redevelopment.

[FR Doc. 04–20221 Filed 9–3–04; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 69, No. 172
Tuesday, September 7, 2004

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Proposed Porcupine Pass East, Nine Allotment Grazing Analysis Caribou-Targhee National Forest, Clark County, ID

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare Environmental Impact Statement.

SUMMARY: The USDA Forest Service will prepare an Environmental Impact Statement to document the analysis and disclose the environmental impacts of proposed actions to graze livestock on grazing allotments of east of Porcupine Pass on the Dubois Ranger District of the Caribou-Targhee National Forest, Clark County, Idaho. The proposed project is located on all Sections of Forest System lands within Townships 12, 13, and 14 North, Ranges 37, 38, and 39 East, Boise Meridian, Clark County, Idaho. The Dubois Ranger District of the Caribou-Targhee National Forest proposes to analyze livestock grazing activities on nine allotments. The following table shows the current permitted use on each allotment:

Allotment	Permitted use	Season of use	[1] Grazing system
Alex Draw—Threemile C&H	220 cow/calves	6/16–9/15	4 Unit Deferred Rotation.
Corral-Crab Creek S&G	1000 ewe/lambs and 2 horses	6/16–9/15	Deferred Rotation.
Pete-Stump Creek S&G	1000 ewe/lambs and 2 horses	7/1–9/15	Deferred Rotation.
Table Mountain S&G	1000 ewe/lambs and 2 horses	7/6–9/10	Deferred Rotation.
West Camas C&H	908 cow/calves	6/26–10/15	4 Unit Deferred Rotation.
Rattlesnake S&G	761 ewe/lambs and 2 horses	6/16–8/31	Deferred Rotation.
East Camas C&H	71 cow/calf	7/1–9/30	2 Unit Deferred Rotation.
Cottonwood-East Camas S&G	1000 ewe/lambs and 2 horses	7/1–9/25	Deferred Rotation.
Ching Creek S&G	750 ewe/lambs and 2 horses	7/1–8/31	Deferred Rotation.

[1] A deferred rotation grazing system provides deferred grazing in two or more units or pastures on a systematic basis.

The purpose of this project is to comply with Public Law 104–19 (1995). Section 504 of the law requires that the Forest Service conduct an analysis on all allotments where the livestock grazing that is authorized has not been analyzed in compliance with the National Environmental Policy Act (NEPA) of 1969.

The need of this proposed action is to continue to provide forage for livestock of local livestock producers to meet the Desired Future Condition for production of commodity resources as stated in the Revised Targhee Forest Plan (RFP) II–3. "Commodity production, such as * * * livestock forage * * * are conducted at sustainable levels and maintain the capability of the land to produce an even flow and variety of goods and services for present and future generations. Forest products are provided to sustain social and economic values and needs of the local communities within limits which maintain ecosystem health."

The RFP designates each of the 9 allotments in this project area as open to domestic livestock grazing. The Revised Forest Plan also provides specific direction, standards and guidelines for managing livestock grazing. These standards and guidelines are currently included in the permits to graze livestock on the allotments and will continue to be part of each allotments' management.

The issues identified during scoping and the analysis process will determine alternatives to the proposed action. The no action alternative will be analyzed.

DATES: Written comments concerning the scope of the analysis described in this Notice should be received with 30 days of the date of publication of this Notice in the **Federal Register**. No scoping meetings are planned at this time. Information received will be used in preparation of the draft EIS and final EIS.

ADDRESSES: Send written comments to Caribou-Targhee National Forest, Dubois Ranger District, P.O. Box 46, Dubois, Idaho 83423.

FOR FURTHER INFORMATION CONTACT: Questions concerning the proposed action and EIS should be directed to Shane Jacobson, Caribou-Targhee National Forest, Dubois Ranger District, 225 West Main Street, P.O. Box 46, Dubois, Idaho 83423 (Telephone: (208) 374–5422.)

SUPPLEMENTARY INFORMATION: The Forest Service is seeking information and comments from Federal, State and local agencies, as well as individuals and organizations that may be interested in, or affected by the proposed action. The Forest Service invites written comments and suggestions on the issues related to the proposal and the area being analyzed.

The responsible official is Robbert G. Mickelsen, District Ranger, Caribou-Targhee National Forest, P.O. Box 46, Dubois, Idaho 83423.

The decision to be made is to decide whether to continue the present course of action (the no action alternative) or to implement the proposed action with applicable mitigation measures, or to implement an alternative to the

proposed action with its applicable mitigation measures.

The tentative date for filing the Draft EIS is 31 December 2004. The tentative date for filing the final EIS is 1 April 2005. The comment period on the draft environmental impact statement will be open for 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give viewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alert an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, (1978). Also, environmental objections that could be raised at the draft impact statement stage but are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period of the Draft Environmental Impact statement so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the Final Environmental Impact Statement. Agency representatives and other interested people are invited to visit with Forest Service officials at any time during the EIS process.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the Draft Environmental Impact Statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the Draft. Comments may also address the adequacy of the Draft Environmental Impact Statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points. Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentially should be aware that, under the FOIA, confidentially may be granted in only limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentially, and if the request is denied; the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within 10 days.

Dated: August 23, 2004.

Robbert G. Mickelsen,

District Ranger, Dubois Ranger District, Caribou-Targhee National Forest, Intermountain Region, USDA Forest.

[FR Doc. 04–20228 Filed 9–3–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Fresno County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Fresno County Resource Advisory Committee will meet in Prather, California. The purpose of the meeting is to discuss and to recommend project proposals for FY2005 funds regarding the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) for expenditure of Payments to States Fresno County Title II funds.

DATES: The meeting will be held on October 12, 2004 from 6:30 p.m. to 9:30 p.m.

ADDRESSES: The meeting will be held at the Sierra National Forest, High Sierra Ranger District, 29688 Auberry Road, Prather, California, 93651. Send written comments to Robbin Ekman, Fresno County Resource Advisory Committee Coordinator, c/o Sierra National Forest, Hight Sierra Ranger District, 29688 Auberry Road, Prather, CA 93651 or electronically to *rekman@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Robbin Ekman, Fresno County Resource Advisory Committee Coordinator, (559) 855–5355 ext. 3341.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring Payments to States Fresno County Title II project matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting.

Public sessions will be provided and individuals who made written requests by October 12, 2004 will have the opportunity to address the Committee at those sessions. Agenda items to be covered include: (1) Call for new projects; (2) committee appointments (3) report back from project recipients; (4) public comment.

Dated: August 30, 2004.

Ray Porter,

District Ranger.

[FR Doc. 04–20200 Filed 9–3–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Siskiyou County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Siskiyou County Resource Advisory Committee will meet in Yreka, California, September 20, 2004. The meeting will include routine business, a discussion of larger scale projects, and the review and recommendation for implementation of submitted project proposals.

DATES: The meeting will be held September 20, 2004, from 4:30 p.m. until 8 p.m.

ADDRESSES: The meeting will be held at the Yreka High School Library, Preece Way, Yreka, California.

FOR FURTHER INFORMATION CONTACT: Don Hall, RAC Coordinator, Klamath National Forest, (530) 841–4468 or electronically at *donaldhall@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Public comment opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: August 31, 2004.

Margaret J. Boland,

Designated Federal Official.

[FR Doc. 04–20201 Filed 9–3–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Advisory Committee on Agriculture Statistics

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice of renewal at USDA.

SUMMARY: The U.S. Department of Agriculture (USDA) has renewed the charter for the Advisory Committee for Agriculture Statistics. Effective October 1, 1996, responsibility for the census of agriculture program was transferred to the National Agricultural Statistics Service (NASS) at USDA from the Bureau of the Census, U.S. Department of Commerce. Effective February 2, 1997, NASS also received the transferred program positions and staff from the Bureau of the Census, U.S. Department of Commerce. Responsibility for the Advisory Committee on Agriculture Statistics, which is a discretionary committee, was transferred, along with its allocated slot, to USDA with the census of agriculture program.

The Advisory Committee on Agriculture Statistics has provided input and direction to the census of agriculture program since the committee was first established on July 16, 1962. It has been particularly critical to have the committee as a valuable resource to USDA during the transfer of the census from the U.S. Department of Commerce.

The purpose of the committee is to make recommendations on census of agriculture operations including questionnaire design and content, publicity, publication plans, and data dissemination.

FOR FURTHER INFORMATION CONTACT: R. Ronald Bosecker, Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–2707.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (5 U.S.C. appendix), notice is hereby given that the Secretary of Agriculture has renewed the charter for the Advisory Committee on Agriculture Statistics, hereafter referred to as Committee. The purpose of the Committee is to advise the Secretary of Agriculture on the conduct of the periodic censuses and surveys of agriculture, other related surveys, and the types of agricultural information to obtain from respondents. The committee also prepares recommendations regarding the content of agriculture reports, and presents the views and needs for data of major suppliers and users of agriculture statistics.

The Secretary of Agriculture has determined that the work of the Committee is in the public interest and relevant to the duties of USDA. No other advisory committee or agency of USDA is performing the tasks that will be assigned to the Committee.

The Committee, appointed by the Secretary of Agriculture, shall consist of 25 members representing a broad range of disciplines and interests, including, but not limited to, agricultural economists, rural sociologists, farm policy analysts, educators, State agriculture representatives, and agriculture-related business and marketing experts.

Representatives of the Bureau of the Census, U.S. Department of Commerce, and Economic Research Service, USDA, serve as ex-officio members of the Committee.

The committee draws on the experience and expertise of its members to form a collective judgment concerning agriculture data collected and the statistics issued by NASS. This input is vital to keep current with shifting data needs in the rapidly changing agricultural environment and keep NASS informed of emerging developments and issues in the food and fiber sector that can affect agriculture statistics activities.

Equal opportunity practices, in line with USDA policies, will be followed in all membership appointments to the Committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by USDA, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Signed at Washington, DC, August 27, 2004.

R. Ronald Bosecker,

Administrator.

[FR Doc. 04–20217 Filed 9–3–04; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–816]

Certain Corrosion–Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Preliminary Results of Antidumping Duty Administrative Review and Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests from petitioners, the Department of Commerce (the Department) is conducting the tenth administrative review of the antidumping order on corrosion–resistant carbon steel flat products (CORE) from Korea.[1] This review covers three manufacturers and exporters of the subject merchandise: Union Steel Manufacturing Co., Ltd. (Union), Pohang Iron & Steel Company, Ltd. (POSCO), Pohang Coated Steel Co., Ltd. (POCOS), and Pohang Steel Industries Co., Ltd. (PSI) (collectively, the POSCO Group), and Dongbu Steel Corporation, Ltd. (Dongbu). The period of review (POR) is August 1, 2002, through July 31, 2003. In response to a request from Hyundai Hysco (HYSCO), the Department is also conducting a new–shipper review. The POR for the new–shipper review is August 1, 2002, through July 31, 2003.

We preliminarily determine that during the POR, Union, the POSCO Group, Dongbu, and HYSCO did not make sales of the subject merchandise at less than normal value (NV) (*i.e.*, sales were made at "zero" or *de minimis* dumping margins). If these preliminary results are adopted in the final results of this administrative review, we will instruct Customs and Border Protection (CBP) to liquidate appropriate entries without regard to antidumping duties. Furthermore, we rescinded the request for review of the antidumping order for SeAH Steel Corporation (SeAH) because neither SeAH nor its affiliates had exports or sales of subject merchandise to the United States during the POR. For more information, see *Corrosion–Resistant Carbon Steel Flat Products from Korea: Partial Rescission of Antidumping Duty Administrative Review*, 69 FR 25059 (May 5, 2004) (*Partial Rescission of CORE*).

Interested parties are invited to comment on these preliminary results. Parties who submit comments in this segment of the proceeding should also submit with them: (1) a statement of the

[1] Petitioners are the International Steel Group.

issues and (2) a brief summary of the comments.

EFFECTIVE DATE: September 7, 2004.

FOR FURTHER INFORMATION CONTACT: Mark Young (Union), Carrie Farley (Dongbu), Lyman Armstrong (the POSCO Group), and Joy Zhang (HYSCO), AD/CVD Enforcement, Office III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–6397, (202) 482–0395, (202) 482–3601, and (202) 482–1168, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 19, 1993, the Department published the antidumping order on CORE from Korea. *See Antidumping Duty Orders on Certain Cold–Rolled Caron Steel Flat Products and Certain Corrosion–Resistant Carbon Steel Flat Products from Korea*, 58 FR 44159 (August 19, 1993) (*Orders on Certain Steel from Korea*). On August 1, 2003, we published in the **Federal Register** the notice of *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 68 FR 45218. On August 29, 2003, petitioners requested reviews of the POSCO Group, SeAH, Dongbu, Dongshin Special Steel Co., Ltd. (Dongshin), and Union. The Department initiated these reviews on September 30, 2003. *See, Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation in Part and Deferral of Administrative Review*, 68 FR 56262.

On August 29, 2003, HYSCO requested a new shipper review. On October 3, 2003, the Department initiated this review. *See Corrosion–Resistant Carbon Steel Flat Products from Korea: Initiation of New Shipper Antidumping Duty Review*, 68 FR 57423.

During the most recently completed segments of the proceeding in which SeAH, Dongbu, Union, and the POSCO Group participated, the Department found and disregarded sales that failed the cost test.[2] Pursuant to section 773(b)(2)(A)(ii) of the Tariff Act of 1930, as amended (the Act), we had reasonable grounds to believe or suspect that sales by these companies of the foreign like product under consideration for the determination of NV in this review were made at prices below the cost of production (COP). Therefore, we instructed SeAH, Dongbu, Union, and the POSCO Group to fill out sections A–D of the initial questionnaire, which we issued on October 3, 2003.[3]

On January 2, 2004, petitioners alleged that HYSCO made sales of the foreign like product under consideration for the determination of NV in this review at prices below COP. On January 20, 2004, the Department rejected petitioners' COP allegation. *See* the Department's January 20, 2004, letter from the Department to petitioners, a public document on file in the Central Records Unit (CRU) room B099 in the main Commerce building. On January 22, 2004, petitioners submitted revised COP allegations. On February 3, 2004, HYSCO rebutted petitioners' COP allegation. On March 29, 2004, the Department initiated a COP investigation of HYSCO. *See* the Department's March 29, 2004, memorandum, the public version of which is available in the CRU. Therefore, we issued a section D questionnaire to HYSCO on April 5, 2004.

On March 4, 2004, the Department published an extension of preliminary results of the administrative review, extending the preliminary results until August 30, 2004.[4] *See Corrosion–Resistant Carbon Steel Flat Products from Korea: Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review*, 69 FR 10203.

On March 24, 2004, the Department published an extension of preliminary results of the new shipper review, extending the preliminary results until July 22, 2004. *See Corrosion–Resistant Carbon Steel Flat Products from Korea: Extension of Time Limit for the Preliminary Results of Antidumping Duty New Shipper Review*, 69 FR 13812. On April 15, 2004, the Department aligned the new shipper review with the current administrative review, further extending the preliminary results of the new shipper review until August 30, 2004. *See Memorandum to the File from Paul Walker, re: Request for Alignment of Annual and New Shipper Reviews*, a public document on file in the CRU.[5]

SeAH

On May 5, 2004, the Department rescinded the review of SeAH because neither SeAH nor its affiliates had exports or sales of the subject merchandise to the United States during the POR. *See Partial Rescission of CORE.*

On June 22, 2004, the Department published a correction regarding its rescission of the review of SeAH. *See Corrosion–Resistant Carbon Steel Flat Products from Korea: Partial Rescission of Antidumping Duty Administrative Review*, 69 FR 34646, in which the Department addressed a comment from petitioners that it inadvertently failed to address in the March 4, 2004, rescission notice. Upon review of petitioners' additional comment, the Department determined to continue to rescind the review of SeAH. *Id.* at 34647.

Dongshin

On October 24, 2003, the Department confirmed that Dongshin received the initial questionnaire. *See* the October 24, 2003, memorandum to the file containing the shipping receipt indicating that Dongshin had received the initial questionnaire, a public document on file in the CRU. On November 7, 2003, the Department sent a letter to Dongshin inquiring whether it intended to respond to the Department's initial questionnaire. Dongshin failed to respond to the Department's attempts to contact it and failed to respond to the initial questionnaire.

Dongbu

On November 10, 2003, Dongbu submitted its section A response. On December 5, 2003, Dongbu submitted its sections B through D response. On May 3, 2004, Dongbu submitted its supplemental questionnaire response for sections A through D. On August 6, 2004, Dongbu submitted an additional supplemental questionnaire response.

Union

On November 10, 2003, Union submitted its section A response. On December 5, 2003, Union submitted its sections B through D response. On April 2, 2004, Union submitted its supplemental questionnaire response. On July 23 and July 30, 2004, Union submitted its second and third supplemental questionnaire responses, respectively.

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[2] *See Notice of Final Results of Antidumping Duty Administrative Reviews: Certain Corld-Rolled and Corrosion-Resistant Steel Flat Products from Korea*, 67 FR 11976 (March 18, 2002) (7th Review of CORE from Korea).

[3] Section A: Organization, Accounting Practices, Markets and Merchandise Section B: Comparison Market Sales

Section C: Sales to the United States

Section D: Cost of Production and Constructed Value

[4] As a result of a typographical error, the Department published the extended preliminary signature date as September 1, 2004. The actual signature date is August 30, 2004.

[5] The memorandum states that September 1, 2004, is the new date for the preliminary results; however, the correct date for the preliminary results of the administrative and new shipper reviews is August 30, 2004.

The POSCO Group

On November 19, 2003, the POSCO Group submitted its section A response. On December 12, 2003, the POSCO Group submitted its sections B through D response. On April 14, 2004, the POSCO Group submitted its supplemental questionnaire response for sections A through C. On May 17, 2004, the POSCO Group submitted its supplemental questionnaire response for section D.

HYSCO

On November 21, 2003, HYSCO submitted its section A response and its importer questionnaire response. On December 12, 2003, HYSCO submitted its section B through D response. On January 16, 2004, HYSCO submitted its supplemental section A responses. On February 13, 2004, HYSCO submitted its supplemental questionnaire response for sections B and C. On April 23, 2004, HYSCO submitted questionnaire responses to sections A through D of the Department's questionnaire. On July 1, 2004, HYSCO submitted its 2003 consolidated and unconsolidated financial statements of Hyundai Pipe of America (HPA), HYSCO's U.S. affiliated company. On July 20, 2004, HYSCO submitted a supplemental questionnaire response to section D.

Petitioners' Request for Revision to the Model Match Criteria

In their May 28, 2004, submission, petitioners requested that the Department refine its model match criteria to reflect the actual sales and pricing practices undertaken by Dongbu, Union, and POSCO during the POR. Petitioners claim that the Department's model match criteria currently is based on a design from the underlying investigation that no longer reflects the sales and pricing practices of the Korean respondents. Thus, petitioners request that the Department obtain the Korean respondents' actual product specifications—actual thickness, width, etc.—so that real product comparisons can be made rather than comparisons based on classifications provided by the companies.

In their June 7, 2004, submission, Dongbu and Union object to petitioners' request for revisions to the model match criteria. Dongbu and Union assert that their current internal pricing guidelines are the same as those used by the Department in the underlying investigation to establish the original matching criteria. They further argue that the Department's established policy dictates that it refrain from revising model match criteria absent evidence of a change in the norms of the industry under review. The Korean respondents contend that the internal pricing guidelines on which petitioners' argument relies fail to constitute sufficient evidence of a change in industry norms.

The Department has determined not to alter the model match criteria in this segment of the proceeding. For further discussion of the this issue, see the August 27, 2004, memorandum from Eric B. Greynolds, Program Manager, Office of AD/CVD Enforcement III, to Melissa G. Skinner, Office Director, Office of AD/CVD Enforcement III, of which the public version is available in the CRU.

Period of Review

The POR for these reviews is August 1, 2002, through July 31, 2003. These reviews cover entries from Dongshin, Dongbu, Union, the POSCO Group, and HYSCO.

Scope of the Reviews

These reviews cover flat–rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion–resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron–based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090. Included in these reviews are flat–rolled products of non–rectangular cross–section where such cross–section is achieved subsequent to the rolling process (i.e., products which have been "worked after rolling") for example, products which have been beveled or rounded at the edges. Excluded from these reviews are flat–rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin–free steel"), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from these reviews are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from these reviews are certain clad stainless flat–rolled products, which are three–layered corrosion–resistant carbon steel flat–rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat–rolled product clad on both sides with stainless steel in a 20%–60%–20% ratio.

These HTS item numbers are provided for convenience and customs purposes. The written descriptions remain dispositive.

Verification

The Department is determining which of the three Korean respondents (Union, Dongbu, and the POSCO Group) involved in the administrative review it will verify. Further, in keeping with its current practice regarding new shipper reviews, the Department intends to verify the questionnaire responses submitted by HYSCO. All verifications undertaken in the administrative reviews and new shipper review will be conducted after the publication of the preliminary results. Parties will be given the opportunity to comment on the Department's verification findings in their case and rebuttal briefs.

Use of Partial Facts Available

The Department has determined preliminarily that the use of partial facts available is appropriate for purposes of determining the preliminary dumping margin for subject merchandise sold by Union. Specifically, the Department has applied partial facts available for various expenses and adjustments with respect to the comparison margin program for Union. *See* Union's August 31, 2004, Preliminary Calculation Memorandum (Union's Preliminary Calculation Memorandum).

Section 776(a)(2) of the Act provides that "if an interested party or any other person (A) withholds information that

has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title."

In its section B–D response at section B, page 14, Union reported its inland freight charge for certain home market sales as "freight equalized" (*i.e.*, Union splits the freight charge with the customer based on a freight schedule). However, upon closer examination of the home market database and sample documentation submitted by Union, it appears that Union reported the entire freight amount, including the amount paid by the customer.

As long recognized by the Court of International Trade (CIT), the burden is on the respondent, not the Department, to create a complete and accurate record. *See Pistachio Group of Association Food Industries* v. *United States*, 641 F. Supp. 31, 39–40 (CIT 1987). In its narrative questionnaire response, Union indicated that the total inland freight amount, for certain home market sales, is allocated to the customer and Union based on a fee schedule that it provided. However, as noted above, it appears that in the home market database Union incurred the total cost of the inland freight. Therefore, in accordance with section 776(a)(2)(B) of the Act, we are applying partial facts otherwise available in calculating Union's dumping margin. As facts available, the Department used the sample documentation that illustrates the freight split as provided in Exhibit 21 of Union's April 2, 2004, submission as a basis for determining the freight paid by Union. *See* Union's Preliminary Calculation Memorandum.

Use of Adverse Facts Available

In accordance with section 776(a)(2) of the Act, the Department has determined that the use of facts available is appropriate for purposes of determining the preliminary antidumping duty margins for the subject merchandise sold by Dongshin. Section 776(a)(2) of the Act provides:

> If an interested party (A) withholds information that has been requested by the administrating authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and the manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.

Moreover, section 776(b) of the Act provides that:

> If the administering authority finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority, the administering authority, in reaching the applicable determination under this subtitle, may use an inference that is adverse to the interests of the party in selecting from among the facts otherwise available.

As explained above in the "Background" section of these preliminary results, Dongshin, despite the Department's repeated inquires, failed to provide a response to the Department's initial questionnaire. Therefore, we have determined that Dongshin's failure to respond to the Department's questionnaire warrants the use of facts otherwise available pursuant to sections 776(a)(2)(A) and (C) of the Act. Moreover, the Department finds that Dongshin failed to cooperate by not acting to the best of its ability by not submitting a questionnaire response; accordingly, the Department is using an inference that is adverse to Dongshin in the preliminary results pursuant to section 776(b) of the Act.

Section 776(c) of the Act provides that when the Department selects from among the facts otherwise available and relies on "secondary information," the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The Statement of Administrative Action (SAA) provides that "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value. *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103–316 at 870 (1994) and 19 CFR 351.308(d). However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only source for margins is administrative determinations. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of the proceeding, it does not question the reliability of the margin for that time period. *See Grain–Oriented Electrical Steel from Italy: Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 36551, 36552 (July 11, 1996). With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin.

For example, in *Fresh Cut Flowers from Mexico: Final Results of Antidumping Administrative Review*, 61 FR 6812 (February 22, 1996), the Department disregarded the highest margin in that case as adverse best information available (the predecessor to facts available) because the margin was based on another company's rate that was uncharacteristic of the industry, resulting in an unusually high margin. Similarly, the Department does not apply a margin that has been discredited. *See D & L Supply Co.* v. *United States*, 113 F.3d 1220, 1221 (Fed. Cir. 1997) (the Department will not use a margin that has been judicially invalidated); *see also F. Lii De Cecco di Filippo* v. *U.S.*, 216 F.3d 1027 (Fed. Cir. 2000). Accordingly, for Dongshin we have resorted to adverse facts available and have used the all others rate in effect for this order (17.70 percent)[6], which is the highest margin upheld in

[6] The all others rate was a calculated rate based on the weighted-average margin for Pohang Iron and Steel, the sole respondent in the investigation of corrosion-resistant steel from Korea. *See Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From Korea*, 58 FR 37176 (July 9, 1993); *see also Amendment of Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From Korea*, 58 FR 41083 (August 2, 1993). The Department considered using the higher rate we calculated for Dongbu in the fifth administrative review of this proceeding; however, we found that rate to be inappropriate because it was based upon duty absorption. *See Notice of Amended Final Results of Antidumping Duty Administrative Reviews: Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea*, 65 FR 24180 (April 25, 2000).

this proceeding, as the margin for these preliminary results because there is no evidence on the record indicating that such a margin is not appropriate as adverse facts available. *See Orders on Certain Steel from Korea.*

Transactions Reviewed for the POSCO Group

For these preliminary results, we have accepted the POSCO Group's reporting methodology for overruns and have excluded reported overrun sales in the home market from our sales comparisons because such sales were outside the ordinary course of trade.[7] This is consistent with the methodology we accepted in prior reviews. *See, e.g., Certain Cold–Rolled and Corrosion–Resistant Carbon Steel Flat Products from the Republic of Korea: Notice Preliminary Results of Antidumping Duty Administrative Review*, 66 FR 47163, 47166 (September 11, 2001) (*Preliminary Results of the 7th Review of CORE from Korea*). Based on its questionnaire response, we have adopted the same approach with respect to overrun sales made by Union.

Affiliated Parties

For purposes of these reviews, we are treating POSCO, POCOS, and PSI as affiliated parties and have "collapsed" them, *i.e.*, treated them as a single producer of CORE, within the meaning of 19 CFR 351.401(f)(1). We refer to the collapsed respondent as the POSCO Group. We note that the POSCO Group was treated as collapsed in the most recently completed segment of this proceeding. *See Preliminary Results of the 7th Review of CORE from Korea*, 66 FR at 47166–47167. The POSCO Group has submitted no information to warrant reconsideration of that determination.

In past reviews, we have taken the same approach with respect to Union and Dongkuk Industries Co., Ltd. (DKI). *Id.* However, based on information submitted by Union, we have preliminarily determined not to collapse Union and DKI. For further information, see the August 27, 2004, memorandum from Mark Young, Senior Analyst, Office of AD/CVD Enforcement III, and Eric B. Greynolds, Program Manager, Office of AD/CVD Enforcement III, to Melissa G. Skinner, Director, Office of AD/CVD Enforcement III re: Collapsing.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all CORE products produced by the respondents and sold in the home market during the POR to be foreign like products for the purpose of determining appropriate product comparisons to CORE sold in the United States.

Where there were no sales in the ordinary course of trade of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed in Appendix V of the Department's antidumping questionnaire. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondent. Where sales were made in the home market on a different weight basis from the U.S. market (theoretical versus actual weight), we converted all quantities to the same weight basis, using the conversion factors supplied by the respondents, before making our fair–value comparisons.

Normal Value Comparisons

To determine whether sales of CORE by the respondents to the United States were made at less than NV, we compared the EP or CEP to the NV, as described in the "Export Price/ Constructed Export Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted–average prices for NV and compared these to individual U.S. transactions.

Date of Sale

It is the Department's practice normally to use the invoice date as the date of sale, although we may use a date other than the invoice date if we are satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale. See 19 CFR 351.401(i). We have preliminarily determined that there is no reason to depart from the Department's treatment of invoice date as the date of sale for Dongbu, the POSCO Group, and Union. Consistent with prior reviews, for home market sales, we used the reported date of the invoice from the Korean manufacturer; for U.S. sales we have followed the Department's methodology from prior reviews, and have based date of sale on invoice date from the U.S. affiliate, unless that date was subsequent to the date of shipment to the unaffiliated customer from Korea, in which case that shipment date is the date of sale. *See Certain Cold–Rolled and Corrosion–Resistant Carbon Steel Flat Products from Korea: Preliminary Results*, 65 FR 54197, 54201 (September 7, 2000) (*Preliminary Results of the 8th Review of CORE from Korea*), and *Certain Cold–Rolled and Corrosion–Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews*, 66 FR 3540 (January 16, 2001) (*8th Review of CORE from Korea*). Consistent with the Department's practice, we have used shipment date as date of sale for HYSCO because shipment date occurred prior to invoice date. *See Honey from Argentina: Preliminary Results of Antidumping Duty Administrative Review*, 69 FR 621, (January 6, 2004). *See also Notice of Final Determinations of Sales at Less than Fair Value: Certain Durum Wheat and Hard Red Spring Wheat from Canada*, 68 FR 52741 (September 5, 2003) and accompanying Decision Memorandum at Comment 3.

Export Price/Constructed Export Price

We calculated the price of U.S. sales based on CEP, in accordance with section 772(b) of the Act. The Act defines the term "constructed export price" as "the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d)." In contrast, "export price" is defined as "the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States." Sections 772(a) and (b) of the Act.

In determining whether to classify U.S. sales as either EP or CEP sales, the Department must examine the totality of the circumstances surrounding the U.S. sales process, and assess whether the reviewed sales were made "in the United States" for purposes of section 772(b) of the Act. In the instant case, the record establishes that Dongbu's, the POSCO Group's, Union's, and HYSCO's affiliates in the United States (1) took title to the subject merchandise and (2) invoiced and received payment from the unaffiliated U.S. customers. Thus, the Department has determined that these U.S. sales should be classified as CEP transactions.

For Dongbu, the POSCO Group, Union, and HYSCO we calculated CEP based on packed prices to unaffiliated customers in the United States. Where appropriate, we made deductions from the starting price for foreign inland freight, foreign inland insurance, foreign

[7] For purposes of this proceeding, overrun sales are those products which have not been sold within 90 days of production or those products which were produced for export but were, in fact, sold to the domestic market.

brokerage and handling, international freight, marine insurance, U.S. warehousing expenses, U.S. wharfage, U.S. inland freight, U.S. brokerage and handling, loading expenses, other U.S. transportation expenses, U.S. customs duties, commissions, credit expenses, letter of credit expenses, warranty expenses, other direct selling expenses, inventory carrying costs incurred in the United States, and other indirect selling expenses in the country of manufacture and the United States associated with economic activity in the United States. Pursuant to section 772(d)(3) of the Act, we made an adjustment for CEP profit. Where appropriate, we added interest revenue to the gross unit price.

In order to ensure that we have accounted for all appropriate U.S. interest expenses (*i.e.* both imputed and actual) without double–counting, we have utilized the following interest expense methodology. As in the prior review, in the U.S. indirect selling expenses, we have included net financial expenses incurred by the respondent's U.S. affiliates; however, we added U.S. interest expenses only after deducting U.S. imputed credit expenses and U.S. inventory carrying costs, so as to eliminate the possibility of double–counting U.S. interest expenses.[8]

Consistent with the Department's normal practice, we added the reported duty drawback to the gross unit price. We did so in accordance with the Department's long–standing test, which requires: (1) that the import duty and rebate be directly linked to, and dependent upon, one another; and (2) that the company claiming the adjustment demonstrate that there were sufficient imports of imported raw materials to account for the duty drawback received on the exports of the manufactured product. *See Preliminary Results of the 8th Review of CORE from Korea*, 65 FR at 54202.

Normal Value

Based on a comparison of the aggregate quantity of home market and U.S. sales, we determined that the quantity of the foreign like product sold in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States, pursuant to section 773(a) of the Act. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based NV on the price at which the foreign like product was first sold for consumption in the home market, in the usual commercial quantities and in the ordinary course of trade.

Where appropriate, we deducted rebates, discounts, inland freight (offsets, where applicable, by freight revenue), inland insurance, and packing. Additionally, we made adjustments to NV, where appropriate, for credit expenses (offset, where applicable, by interest income), warranty expenses, post–sale warehousing, and differences in weight basis. We also made adjustments, where appropriate, for home market indirect selling expenses and inventory carrying costs to offset U.S. commissions.

We also increased NV by U.S. packing costs in accordance with section 773(a)(6)(A) of the Act. We made adjustments to NV for differences in cost attributable to differences in physical characteristics of the merchandise, pursuant to section 773(a)(6)(C)(ii) of the Act. In accordance with the Department's practice, where all contemporaneous matches to a U.S. sale observation resulted in difference–in-merchandise adjustments exceeding 20 percent of the cost of manufacturing (COM) of the U.S. product, we based NV on constructed value (CV). *See* 19 CFR 351.411.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, we determined NV based on sales in the comparison market at the same level of trade (LOT) as the CEP sales, to the extent practicable. When there were no sales at the same LOT, we compared U.S. sales to comparison market sales at a different LOT. When NV is based on CV, the NV LOT is that of the sales from which we derive selling expenses, general, and administrative expenses (SG&A), and profit.

Pursuant to section 351.412 of the Department's regulations, to determine whether comparison market sales were at a different LOT, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated (or arm's–length) customers. If the comparison–market sales were at a different LOT and the differences affect price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison–market sales at the LOT of the export transaction, we will make an LOT adjustment under section 773(a)(7)(A) of the Act.

Finally, if the NV LOT is more remote from the factory than the CEP LOT and there is no basis for determining whether the differences in LOT between NV and CEP affected price comparability, we will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut–to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732–33 (November 19, 1997). Specifically in this review, we did not make an LOT adjustment for any respondent. We are preliminarily granting a CEP offset for the POSCO Group and Dongbu. However, we did not grant a CEP offset for Union or HYSCO because we determined that NV LOT was not more advanced than the CEP LOT.

For a detailed description of our LOT methodology and a summary of company–specific LOT findings for these preliminary results, see the company–specific calculation memoranda, all on file in the CRU.

Cost of Production/Constructed Value

As explained above, at the time the questionnaires were issued in the administrative review, the seventh administrative review was the most recently completed segment of this proceeding. In accordance with section 773(b)(2)(A)(ii) of the Act, and consistent with the Department's practice, because we disregarded certain below–cost sales by Dongbu, the POSCO Group, and Union in the seventh review, we found reasonable grounds to believe or suspect that these respondents made sales in the home market at prices below the cost of producing the merchandise. *See* the *7th Review of CORE from Korea* and the *Preliminary Results of the 7th Review of CORE from Korea*, 66 FR at 47168. We, therefore, initiated cost investigations with regard to Dongbu, the POSCO Group, and Union in order to determine whether these respondents made home market sales during the POR at prices below their COP within the meaning of section 773(b)(2)(A)(ii) of the Act. As stated above, we have also initiated a COP investigation of HYSCO.

Before making concordance matches, we conducted the COP analysis described below.

A. Calculation of COP

We calculated a company–specific COP for Dongbu, the POSCO Group, Union, and HYSCO based on the sum of each respondent's cost of materials and fabrication for the foreign like product, plus amounts for home–market selling expenses, SG&A, and packing costs in accordance with section 773(b)(3) of the Act. We relied on Dongbu's, the POSCO

[8] *See Issues and Decision Memorandum for the Final Results of Antidumping Administrative Review of Cold-Rolled ("CR") and Corrosion-Resistant ("CORE") Carbon Steel Flat Products from Korea*, from Joseph A. Spetrini to Faryar Shirzad, Comment 1, (March 11, 2002), on file in the CRU.

Group's, and Union's information as submitted.

B. Test of Home–Market Prices

For Union, we used each respondents' weighted–average COP, as adjusted (see "Calculation of COP" above), for the period July 1, 2002, to June 30, 2003, as reported. The COP and CV figures for the POSCO Group and Dongbu were calculated based on costs incurred by the companies during the period July 1, 2002, through June 30, 2003, as reported, for CORE products. We calculated HYSCO's COP and CV based on HYSCO's actual costs of manufacturing the subject merchandise for the POR, August 2002 through July 2003.

We compared the weighted–average COP figures to home–market sales of the foreign like product as required under section 773(b) of the Act. In determining whether to disregard home–market sales made at prices below the COP, as required under sections 773(b)(1)(A) and (B) of the Act, we examined whether (1) within an extended period of time, such sales were made in substantial quantities, and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time. On a product–specific basis, we compared the COP to the home–market prices (not including VAT), less any applicable movement charges, discounts, and rebates.

C. Results of COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below–cost sales of that product because we determined that the below–cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product during the POR were at prices less than the COP, we determined that sales of that model were made in "substantial quantities" for an extended period of time, in accordance with sections 773(b)(2)(B) and (C) of the Act, and were not at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. In such cases, we disregarded the below–cost sales in accordance with section 773(b)(1) of the Act.

Therefore, for Dongbu, Union, the POSCO Group, and HYSCO, for purposes of these preliminary results, we disregarded below–cost sales of a given product of 20 percent or more and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act. *See* the company–specific calculation memoranda, the public versions of which are on file in the CRU.

D. Calculation of CV

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of each respondent's cost of materials, fabrication, SG&A, including interest expenses, U.S. packing costs, and profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the actual amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. For selling expenses, we used the weighted–average home–market selling expenses. We also made adjustments, where appropriate, for home–market indirect selling expenses to offset U.S. commissions in CEP comparisons.

Arm's Length Sales

The POSCO Group reported sales of the foreign like product to an affiliated reseller/service center. Dongbu and HYSCO also reported that they made sales in the home market to affiliated parties. The Department calculates NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the producer or exporter, *i.e.*, sales at arm's length. *See* 19 CFR 351.403(c).

To test whether these sales were made at arm's length, we compared the starting prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, discounts and packing. In accordance with the Department's current practice, if the prices charged to an affiliated party were, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for merchandise identical or most similar to that sold to the affiliated party, we consider the sales to be at arm's–length prices. *See* 19 CFR 351.403(c). Conversely, where sales to the affiliated party did not pass the arm's–length test, all sales to that affiliated party have been excluded from the NV calculation. *Id.*

Currency Conversion

For purposes of the preliminary results, we made currency conversions based on the exchange rates in effect on the dates of the U.S. sales as published by the Federal Reserve Bank of New York. Section 773A(a) of the Act directs the Department to use a daily exchange rate in effect on the date of sale of subject merchandise in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a "fluctuation." In accordance with the Department's practice, we have determined, as a general matter, that a fluctuation exists when the daily exchange rate differs from a benchmark by 2.25 percent. *See, e.g., Certain Stainless Steel Wire Rods from France: Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 8915, 8918 (March 6, 1996) and Policy Bulletin 96–1: *Currency Conversions*, 61 FR 9434, (March 8, 1996). The benchmark is defined as the rolling average of rates for the past 40 business days.

Preliminary Results of the Review

As a result of these reviews, we preliminarily determine that the following weighted–average dumping margins exist:

Producer/Manufacturer	Weighted–Average Margin
Dongbu	0.27 (De Minimis)
Union	0.27 (De Minimis)
The POSCO Group	0.41 (De Minimis)
HYSCO	0.00 (De Minimis)

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties of this proceeding in accordance with 19 CFR 351.224(b). Interested parties may submit case and rebuttal briefs. The Department will announce the due date of the case briefs at a later date. Rebuttal briefs must be limited to issues raised in the case briefs. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument. Further, parties submitting written comments are requested to provide the Department with an additional copy of the public version of any such comments on diskette. An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, ordinarily will be held two days after the due date of the rebuttal briefs. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, or at a hearing, if requested, within 120 days of publication of these preliminary results.

Assessment Rate

Pursuant to 19 CFR 351.212(b), the Department calculated an assessment

rate for each importer of the subject merchandise. Upon issuance of the final results of this administrative review, if any importer–specific assessment rates calculated in the final results are above *de minimis* (*i.e.*, at or above 0.5 percent), the Department will issue appraisement instructions directly to CBP to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise. For assessment purposes, we calculated importer–specific assessment rates for the subject merchandise by aggregating the dumping margins for all U.S. sales to each importer and dividing the amount by the total entered value of the sales to that importer. Where appropriate, to calculate the entered value, we subtracted international movement expenses (*e.g.*, international freight) from the gross sales value.

Cash Deposit Requirements

To calculate the cash deposit rate for each producer and/or exporter included in this administrative review, we divided the total dumping margins for each company by the total net value for that company's sales during the review period.

The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of certain pasta from Italy entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rates for the companies listed above will be the rates established in the final results of these reviews, except if the rate is less than 0.5 percent and, therefore, *de minimis*, the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company–specific rate published for the most recent final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in these reviews, a prior review, or the original less than fair value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent final results for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in these or any previous review conducted by the Department, the cash deposit rate will be 17.70 percent, the "All Others" rate established in the underlying investigation. *See Orders on Certain Steel from Korea.*

These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 30, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E4–2085 Filed 9–3–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–485–803]

Certain Cut-to-Length Carbon Steel Plate From Romania: Preliminary Results of the Antidumping Duty Administrative Review and Notice of Intent To Rescind in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from a domestic interested party (International Steel Group, Inc.), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain cut-to-length carbon steel plate from Romania. The period of review is August 1, 2002, through July 31, 2003. With regard to two Romanian companies, producer Ispat Sidex, S.A. (Sidex) and exporter Metalexportimport, S.A. (MEI), we preliminarily determine that sales have been made below normal value (NV). With regard to CSR SA Resita (CSR) and MINMET, S.A. (MINMET), we are giving notice that we intend to rescind this review based on record evidence that there were no entries into the United States of subject merchandise during the period of review (POR). For a full discussion of the intent to rescind with respect to CSR and MINMET, *see* the "Notice of Intent to Rescind in Part" section of this notice below.

We invite interested parties to comment on these preliminary results. Parties that submit comments are requested to submit with each argument (1) a statement of the issue(s), and (2) a brief summary of the argument(s).

EFFECTIVE DATE: September 7, 2004.

FOR FURTHER INFORMATION CONTACT: Ann Barnett-Dahl, Brandon Farlander, and Abdelali Elouaradia at (202) 482–3833, (202) 482–0182, and (202) 482–1374, respectively; Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 2003, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on certain cut-to-length carbon steel plate from Romania, 68 FR 45218 (August 1, 2003). On August 29, 2003, the Department received a timely request from the International Steel Group, Inc. (ISG), a domestic interested party, requesting that the Department conduct an administrative review of the antidumping duty order on certain cut-to-length carbon steel plate shipments exported to the United States from the following Romanian plate producers/exporters during the period of August 1, 2002, through July 31, 2003: (1) Sidex, (2) MEI, (3) CSR, and (4) MINMET. On September 30, 2003, the Department initiated an administrative review of the antidumping duty order on certain cut-to-length carbon steel plate from Romania, for the period covering August 1, 2002, through July 31, 2003, to determine whether merchandise imported into the United States is being sold at less than NV with respect to these four companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation in Part and Deferral of Administrative Review*, 68 FR 56262 (September 30, 2003) (*Administrative Review Initiation*).

On October 24, 2003, the Department issued antidumping duty questionnaires to the four above-referenced Romanian companies. Because Romania graduated to market economy status on January 1, 2003, the POR is divided into both a non-market economy (NME) portion (August 1, 2002, through December 31, 2002) and a market economy (ME) portion (January 1, 2003, through July

31, 2003).[1] On October 30, 2003, MINMET submitted a letter stating that it has never shipped subject merchandise to the United States, including during the POR. On November 12, 2003, CSR stated that it has not produced or sold subject merchandise since 1972, and thus did not have any shipments of subject merchandise to the United States during the POR.

On November 7, 2003, we instructed CSR and Sidex that an NME questionnaire response was required for the entire POR for Sections A, C, and D, and a ME questionnaire response was required for Sections A, B, C, D, and E for January 1, 2003, through July 31, 2003. On November 21, 2003, we received Section A ME responses from Sidex and MEI.[2] On November 24, 2003, we received Section A NME responses from Sidex and MEI. On December 22, 2003, Sidex and MEI jointly filed a combined NME Section C response.[3] On December 22, 2003, Sidex filed a ME Section B response and MEI stated, in this same filing, that MEI did not have any home market (HM) sales during the ME portion of the POR and, thus, would not be filing a Section B response. On December 22, 2003, Sidex and MEI jointly filed a Section C ME response. Also, on December 22, 2003, Sidex and MEI jointly filed a Section C NME response. Finally, on December 22, 2003, Sidex filed a Section D NME response.

On December 30, 2003, IPSCO Steel Inc. (IPSCO), a domestic interested party, filed deficiency comments on Sections B through D of the questionnaire responses for Sidex and exporter MEI. On December 31, 2003, ISG filed deficiency comments on Sections B through D of the questionnaire responses for Sidex and MEI. On January 6, 2004, IPSCO filed deficiency comments on Section D of Sidex's NME response.

On January 7, 2004, we invited interested parties to comment on the Department's surrogate country selection and/or significant production of comparable merchandise in the potential countries, and to submit publicly-available information to value the factors of production. On January 13, 2004, we issued a supplemental questionnaire to Sidex. On January 27, 2004, we received a partial supplemental questionnaire response from Sidex. On February 11, 2004, we received Sidex's supplemental questionnaire response for the remaining questions. On January 16, 2004, ISG filed a letter regarding the most appropriate surrogate country. On January 23, 2004, Sidex filed a letter regarding the most appropriate surrogate country. On January 30, 2004, Sidex filed rebuttal comments on ISG's January 16, 2004, letter regarding the most appropriate surrogate country. On February 18, 2004, ISG filed deficiency comments on Sidex's and MEI's questionnaire responses. On February 27, 2004, ISG filed additional comments regarding the most appropriate surrogate country.

On March 11, 2004, the Department fully extended the preliminary results of this proceeding until August 30, 2004. *See Notice of Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review: Cut-to-Length Carbon Steel Plate from Romania*, 69 FR 11593 (March 11, 2004).

On April 26, 2004, the Department issued its second supplemental questionnaire to Sidex and MEI. On April 30, 2004, ISG filed two surrogate value submissions. On May 5, 2004, ISG filed additional surrogate value data. On May 17, 2004, we received Sidex's second supplemental questionnaire response. On May 25, 2004, the Department issued its third supplemental questionnaire to Sidex and MEI. On May 28, 2004, and June 7, 2004, the Department spoke with counsel for Sidex and asked Sidex additional questions to be answered in Sidex's third supplemental questionnaire response.[4] On June 4, 2004, Sidex and MEI filed a joint partial response to the Department's third supplemental questionnaire. On June 14, 2004, Sidex and MEI filed a joint complete response to the Department's third supplemental questionnaire. On June 15, 2004, Sidex and MEI jointly filed an amended factors of production database. On June 16, 2004, Sidex and MEI jointly filed an amended imported and domestic material database. On August 2, 2004, and August 11, 2004, ISG submitted pre-preliminary results comments. On August 3, 2004, August 4, 2004, and August 5, 2004, Sidex submitted surrogate value data. On August 9, 2004, Sidex submitted new databases (HM ME, U.S. ME, U.S. NME, NME factor of production (FOP)) in response to the Department's request for certain corrections to these databases as a result of verification corrections and findings. Also, on August 9, 2004, the Department requested that Sidex submit its SG&A and interest expense ratios to enable the Department to calculate cost of production, which will be used for the constructed export price (CEP) profit calculation. On August 10, 2004, ISG and Sidex submitted proposed surrogate values. On August 11, 2004, Sidex submitted proposed surrogate values. On August 11, 2004, IPSCO filed pre-preliminary results comments. On August 12, 2004, Sidex submitted its selling, general and administrative (SG&A) and interest expense ratios. On August 16, 2004, ISG submitted proposed surrogate values. On August 20, 2004, Sidex submitted proposed surrogate values and, on August 25, 2004, ISG submitted rebuttal comments.

Notice of Intent To Rescind Review in Part

Pursuant to 19 CFR 351.213(d)(3), the Department may rescind an administrative review, in whole or with respect to a particular exporter or producer, if the Secretary concludes that, during the period covered by the review, there were no entries, exports, or sales of the subject merchandise. The Department explained this practice in the preamble to the Department's regulations. *See Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27317 (May 19, 1997) ("Preamble"); *see also Stainless Steel Plate in Coils from Taiwan: Notice of Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review*, 67 FR 5789, 5790 (February 7, 2002) and *Stainless Steel Plate in Coils from Taiwan: Final Rescission of Antidumping Duty Administrative Review*, 66 FR 18610 (April 10, 2001). As discussed above, on October 30, 2003, MINMET submitted a letter stating that it has never made shipments of subject merchandise to the United States, including during the POR. On November 12, 2003, CSR stated that it has not produced or sold subject merchandise since the year 1972 and, thus, did not have any shipments of subject merchandise to the United

[1] In *Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Romania: Final Results of Antidumping Duty Administrative Review*, 68 FR 12672, 12673 (March 17, 2003), the Department reviewed the non-market economy status of Romania and determined to reclassify Romania as a market economy for purposes of antidumping and countervailing duty proceedings, pursuant to section 771(18)(A) of the Act, effective January 1, 2003 (*Romanian graduation*). *See* Memorandum from Lawrence Norton, Import Policy Analyst, to Joseph Spetrini, Acting Assistant Secretary for Import Administration: Antidumping Duty Administrative Review of Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Romania—Non-Market Economy Status Review (March 10, 2003).

[2] MEI stated on page 13 of its Section A ME response that it is a commissioned agent and, on page 2, that it only sold in the United States subject merchandise produced by Sidex during the POR.

[3] Sidex and MEI filed a joint Section C NME response.

[4] *See ex-parte* meeting memoranda to the file dated May 28, 2004 and June 7, 2004.

States during the POR. To confirm CSR's and MINMET's statements of no shipments of subject merchandise to the United States during the POR, on August 5, 2004, the Department conducted a customs inquiry and determined to our satisfaction that there were no entries of subject merchandise during the POR. Therefore, pursuant to 19 CFR 351.213(d)(3), the Department preliminarily intends to rescind this review as to CSR and MINMET.

Scope of the Antidumping Duty Order

The products covered in this review include hot-rolled carbon steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coil and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7208.31.0000, 7208.32.0000, 7208.33.1000, 7208.33.5000, 7208.41.0000, 7208.42.0000, 7208.43.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.11.0000, 7211.12.0000, 7211.21.0000, 7211.22.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included in this review are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been bevelled or rounded at the edges. Excluded from this review is grade X–70 plate. These HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended (the Act), and section 351.307 of the Department's regulations, we conducted verification of the questionnaire responses of Sidex, MEI, and Sidex's U.S. affiliate, Ispat North America (INA). We used standard verification procedures, including on-site inspection of Sidex's production facility. Our verification results are outlined in the following two memoranda: (1) Memorandum to the File, through Abdelali Elouaradia, Program Manager, Verification of U.S. Sales and Factors of Production Information Submitted by Ispat Sidex S.A. (Sidex) and Metalexportimport S.A. (MEI), dated August 2, 2004 (Sidex/MEI Verification Report); and (2) Memorandum to the File, through Abdelali Elouaradia, Program Manager, Verification of U.S. Sales Information Submitted by Ispat North America Inc. (INA), dated August 2, 2004 (INA Verification Report). Public versions of these reports are on file in the Central Records Unit (CRU) located in room B–099 of the Main Commerce Building.

The following sections refer to the NME portion of the POR (August 1, 2002, through December 31, 2002).

Separate Rates

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to its export activities. In this review, both Sidex and MEI requested separate, company-specific rates.

To establish whether a company is sufficiently independent in its export activities from government control to be entitled to a separate, company-specific rate, the Department analyzes the exporting entity in an NME country under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588, 20589 (May 6, 1991) (*Sparklers*), and *amplified* by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, 22586–22587 (May 2, 1994) (*Silicon Carbide*).

The Department's separate-rate test is unconcerned, in general, with macroeconomic/border-type controls (*e.g.*, export licenses, quotas, and minimum export prices), particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. *See, e.g., Certain Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less Than Fair Value*, 62 FR 61754, 61757 (November 19, 1997); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997); and *Honey from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 60 FR 14725, 14726 (March 20, 1995).

Both Sidex and MEI provided separate-rate information in their responses to our original and supplemental questionnaires. Accordingly, we performed a separate-rates analysis to determine whether the export activities of MEI, who was the exporter of record for all of Sidex's U.S. sales, were independent from government control (*see Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR 56570 (April 30, 1996)). We also performed a separate-rates analysis to determine whether the export activities of Sidex were independent from government control.

Sidex

De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR at 20589.

Sidex has placed on the record a number of documents to demonstrate absence of *de jure control*, including Law No. 15/1990 (*State-Owned Enterprise Restructuring*), Law No. 31/1990 (*Company Law*), the Law No. 26/1990 (*Trade Registry Law*), Emergency Ordinance 88/1997, with amendments becoming Law 99/1999 (*Privatization of Commercial Companies*), Government Ordinance No. 70/1994, approved by Law No. 73/1996 and amended and completed by Law No. 106/1998 (*Corporate Income Tax Law*), and Ordinance No. 92/1997, approved by Law No. 241/1998 (*Equal Treatment for Foreign Investors in the Privatization Process*). *See* Exhibit 3 of Sidex's November 24, 2003, submission.

Sidex is a private joint stock commercial company organized under the Law on Restructuring of State-Owned Enterprises, Law No. 15/1990 and the Romanian Commercial

Companies Law, Law No. 31/1990, as amended. These Romanian laws provide Sidex with the right to establish business organizations for the purpose of conducting any lawful commercial activity, including the export of subject merchandise, provided that the company registers with the government.[5] Sidex's business license (*i.e., Certificat de Inregistrare* or Certificate of Registration) certifies completion of all formalities required for registration with the government.[6] This license does not limit the scope of the activities of the company,[7] but it may be revoked if the company violates Romanian law. The activities of Sidex are limited only by its own articles of incorporation, bylaws, or equivalent documents, which establish the scope of Sidex's business activities. Sidex stated that its scope of activity is broad in that it can do any number of activities related to the sale of hot-rolled steel and other products, including exporting. There are no export licenses required or granted by the government, and the company's license does not allow any special entitlements.[8]

As noted above, Sidex has submitted copies of Law No. 15/1990, Law No. 26/1990, Law No. 31/1990, Ordinance No. 70/1994, and Ordinance No. 92/1997. These enactments are the fundamental laws authorizing the privatization of commercial companies and establishing the legal regime applicable to commercial companies. We note that Emergency Ordinance 88/1997, amended and completed by Law No. 99/1999, established a new framework for the privatization process and Sidex stated that, prior to its own privatization, it participated in some or all of these privatization procedures, or in procedures regulated by previous privatization laws. Sidex stated that it was privatized effective November 16, 2001, when LNM Holdings N.V. and the Romanian Authority for Privatization and Administration of State Ownership (APAPS) finalized the purchase by LNM Holding N.V. of the majority share capital of Sidex. We confirmed the ownership percentages for Sidex's owners at verification and found no evidence of government control. *See* Sidex/MEI Verification Report at 12–13. Moreover, the results of verification support the information provided regarding these Romanian laws.

Therefore, we preliminarily determine that there is an absence of *de jure* control over Sidex's export activities.

De Facto Control

Typically, the Department considers four factors in evaluating whether a respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by, or subject to the approval of, a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts, and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See Silicon Carbide*, 59 FR at 22587.

Sidex has asserted the following: (1) It is a private joint stock commercial company that is independent from government control; (2) it sets its U.S. prices for its export price (EP) sales by arm's-length, direct negotiations with the U.S. customers and MEI, and such prices consider the company's costs, profit, and competition; (3) it sets its U.S. prices for its CEP sales based on market conditions and that Sidex's U.S. affiliate, INA, negotiates its prices for these sales; (4) regardless of whether the U.S. sale was an EP or CEP transaction, there is no government participation in the setting of its prices; (5) its Export Sales Manager, as well as other officials, are authorized to sign export-related contracts on its behalf; (6) it does not have to obtain government approval of its management selection, although it is required to notify the Registry of Trade of any changes that occur at the top management level, providing the Registry of Trade with an updated list of the company's legal representatives (administrators and general director); (7) there are no restrictions on the use of its export revenue, and the General Assembly of Shareholders decides how profits will be used; and (8) it is not required to sell any portion of foreign currency earned to the government. Our analysis of the responses during verification reveals no other information indicating the existence of government control. *See* Sidex/MEI Verification Report at 13. Consequently, because evidence on the record indicates an absence of government control, both in law and in fact, over the company's export activities, we preliminarily determine that Sidex has met the criteria for the application of a separate rate.

MEI

De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR at 20589.

MEI has placed on the record a number of documents to demonstrate absence of *de jure control*, including Law No. 15/1990 (*State-Owned Enterprise Restructuring*), Law No. 31/1990 (*Company Law*), the Law No. 26/1990 (Trade Registry Law), Emergency Ordinance 88/1997, with amendments becoming Law 99/1999 (*Privatization of Commercial Companies*), Government Ordinance No. 70/1994, approved by Law No. 73/1996 and amended and completed by Law No. 106/1998 (*Corporate Income Tax Law*), and Ordinance No. 92/1997, approved by Law No. 241/1998 (*Equal Treatment for Foreign Investors in the Privatization Process*). *See* Exhibit 3 of Sidex's November 24, 2003, submission.

MEI is a joint-stock commercial company organized under the Romanian Commercial Companies Law, Law No. 31/1990, as amended. This Romanian laws provides MEI with the right to establish business organizations for the purpose of conducting any lawful commercial activity, including the export of subject merchandise, provided that the company registers with the government.[9] MEI's business license (*i.e., Certificat de Inregistrare* or Certificate of Registration) certifies completion of all formalities required for registration with the government.[10] This license does not limit the scope of the activities of the company,[11] but it may be revoked if the company violates Romanian law. The activities of MEI are limited only by its own articles of incorporation, bylaws, or equivalent documents, which establish the scope of MEI's business activities. MEI stated

[5] The Commercial Law No. 15/1990 remains the primary corporate law in Romania. This law, however, has been amended by other laws such as Law No. 31/1990 (Company Law) and Law No. 58/1991 (Privatization Law).

[6] *See* Exhibit 4 of Sidex's November 24, 2003 Section A NME response.

[7] *See* pages 6 and 7 of Sidex's November 24, 2003 Section A NME response.

[8] *See* page 6 of Sidex's November 24, 2003 Section A NME response.

[9] The Commercial Law No. 15/1990 remains the primary corporate law in Romania. This law, however, has been amended by other laws such as Law No. 31/1990 (Company Law) and Law No. 58/1991 (Privatization Law).

[10] *See* Exhibit 3 of MEI's November 24, 2003 Section A NME response.

[11] *See* pages 7 and 8 of MEI's November 24, 2003 Section A NME response.

that its scope of activity is broad in that it can do any number of activities related to the sale of steel and other products, including exporting. There are no export licenses required or granted by the government, and the company's license does not allow any special entitlements.[12]

As noted above, MEI has submitted copies of Law No. 15/1990, Law No. 26/1990, Law No. 31/1990, Ordinance No. 70/1994, and Ordinance No. 92/1997. These enactments are the fundamental laws authorizing the privatization of commercial companies and establishing the legal regime applicable to commercial companies. MEI stated that at the first stage of privatization, on May 31, 1993, 63.81 percent of the company's shares were sold mostly to the company's employees and that, currently, MEI is 100 percent privately owned by existing and former employees and by the management of MEI. We confirmed the ownership percentages for MEI's owners at verification and we found no evidence of government control. Moreover, the results of verification support the information provided regarding these Romanian laws. *See* Sidex/MEI Verification Report at 30–31.

Therefore, we preliminarily determine that there is an absence of *de jure* control over MEI's export activities.

De Facto Control

Typically, the Department considers four factors in evaluating whether a respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by, or subject to the approval of, a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts, and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See Silicon Carbide,* 59 FR at 22587.

MEI has asserted the following: (1) It is a joint-stock company that is independent from government control; (2) it sets its U.S. prices via direct negotiations with its customers (except for companies affiliated with Sidex), and such prices consider the company's costs, market demands, and market conditions, and MEI notes that there is a commission agreement between itself and Sidex for the sales it makes on behalf of Sidex; (3) there is no government participation in its setting of its prices; (4) its General Director and three Executive Directors have the authority to approve export sale contracts; (5) it does not have to have government approval of its management selection but it does notify the government of changes; (6) there are no restrictions on the use of its export revenue; and (7) it is not required to sell any portion of foreign currency earned to the government. Our analysis of the responses during verification reveals no other information indicating the existence of government control. *See* Sidex/MEI Verification Report at 31, where the Department reviewed a sales contract between Sidex and MEI and we found no evidence government officials were involved in the contract or negotiations or in the exchange of currency. Consequently, because evidence on the record indicates an absence of government control, both in law and in fact, over MEI's export activities, we preliminarily determine that MEI has met the criteria for the application of a separate rate.

Normal Value Comparisons

To determine whether Sidex's sales of the subject merchandise from Romania to the United States were made at prices below NV, we compared the EP or CEP to the NV, as described in the "Export Price and Constructed Export Price" and "Normal Value" sections of this notice. Because Romania has been graduated to a market economy country (*see Romanian graduation,* 68 FR at 12673), consistent with the effective date of that graduation, January 1, 2003, we have employed a non-market economy (NME) methodology to calculate NV for the period covering August 1, 2002, through December 31, 2002, and a market economy methodology for the period covering January 1, 2003, through July 31, 2003. Thus, there are two NV sections below.

Export Price and Constructed Export Price

In accordance with section 772(a) of the Act, export price is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c). In accordance with section 772(b) of the Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d). For purposes of this administrative review, Sidex has classified its sales as both EP and CEP. Sidex identified two channels of distribution for U.S. sales: (1) Sidex to MEI to unaffiliated steel traders who typically sell to resellers and end-users; and (2) Sidex to MEI to INA and then to unaffiliated U.S. customers, who are distributors.

For U.S. sales channel one (*i.e.,* Sidex/MEI sales to an unaffiliated U.S. customer), we based our calculation on EP, in accordance with section 772(a) of the Act, because the subject merchandise was sold by the producer or exporter directly to the first unaffiliated purchaser in the United States or for export to the United States prior to importation, and CEP methodology was not otherwise indicated. We calculated EP on the packed, delivered, tax and duty paid price to unaffiliated purchasers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight from the plant to the port of export, foreign brokerage and handling, international freight, marine insurance, U.S. brokerage and handling, other U.S. transportation expenses (*i.e.,* U.S. stevedoring, wharfage, and survey), and U.S. customs duty.

For U.S. sales channel two (*i.e.,* Sidex/MEI/INA sales to an unaffiliated U.S. customer), Sidex/MEI has reported these sales as CEP sales because the first sale to an unaffiliated party occurred in the United States. Therefore, for these channel two sales, we based our calculation on CEP, in accordance with subsections 772(b), (c), and (d) of the Act. Where applicable, we made a deduction to gross unit price for early payment discounts. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight from the plant to the port of export, foreign brokerage and handling, international freight, marine insurance, U.S. brokerage and handling, other U.S. transportation expenses (*i.e.,* U.S. stevedoring, wharfage, and survey), and U.S. customs duty. Also, in accordance with section 772(c)(2)(A) of the Act, we deducted packing expenses because packing expenses are included in CEP. In accordance with section 772(d)(1) of

[12] *See* page 8 of MEI's November 24, 2003 Section A NME response.

the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (*i.e.*, imputed credit expenses, commissions, and bank expenses) and indirect selling expenses. For CEP sales, we also made an adjustment for profit in accordance with section 772(d)(3) of the Act. We deducted the profit allocated to expenses deducted under sections 772(d)(1) and 772(d)(2) in accordance with sections 772(d)(3) and 772(f) of the Act.

Normal Value Using NME Methodology

As discussed above, consistent with the January 1, 2003, effective date of graduation of Romania to ME country status, we have applied an NME methodology for the period August 1, 2002, through December 31, 2002.

Section 773(c)(1) of the Act provides that the Department shall determine NV using a factors-of-production methodology if (1) the merchandise is exported from an NME country, and (2) available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. Accordingly, we have applied surrogate values to the factors of production to determine NV for Sidex. *See* Factors of Production Valuation Memorandum for the Preliminary Results of the Administrative Review of the Antidumping Duty Order on Certain Cut-to-Length Carbon Steel Plate from Romania, dated August 30, 2004 (Factor Valuation Memo). A public version of this memorandum is on file in the CRU located in room B–099 of the Main Commerce Building.

We calculated NV based on factors of production in accordance with section 773(c)(4) of the Act and section 351.408(c) of our regulations. We determine that Egypt, Algeria, and the Philippines (1) are comparable to Romania in its level of economic development, and (2) are significant producers of comparable merchandise. However, we have selected Egypt as the primary surrogate country and our first choice for surrogate values. If we cannot find a surrogate value in Egypt because the Egyptian data is either unavailable or unusable, we selected surrogate values from the Philippines and Algeria and, as explained in the Factor Valuation Memo, there are steel producers in both the Philippines and Algeria. Accordingly, we valued the factors of production using publicly-available information from primarily Egypt but also the Philippines and Algeria.

In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data, in accordance with our practice. *See, e.g., Honey From the People's Republic of China: Final Results of First Antidumping Duty Administrative Review*, 69 FR 25060 (May 5, 2004) and Decision Memorandum at Comment 3; and *Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty New Shipper Review*, 67 FR 72139 (December 4, 2002) and accompanying Decision Memorandum at Comment 6. Where appropriate, we adjusted Egyptian (or the relevant surrogate country) import prices by adding foreign inland freight expenses to make them delivered prices. When we used Egyptian (or the relevant surrogate country) import values to value inputs sourced domestically by Romanian suppliers, we added to the Egyptian (or the relevant surrogate country) surrogate values an Egyptian surrogate freight cost calculated using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest port of export to the factory. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp.* v. *United States*, 117 F.3d 1401 (Fed. Cir. 1997). When we used non-import surrogate values for factors sourced domestically by Romanian suppliers, we based freight for inputs on the actual distance from the input supplier to the site at which the input was used. *See, e.g., Honey from the People's Republic of China; Preliminary Results of First Antidumping Duty Administrative Review*, 68 FR 69988, 69992 (December 16, 2003). When we relied on Egyptian (or the relevant surrogate country) import values to value inputs, in accordance with the Department's practice, we excluded imports from both NMEs and countries deemed to have generally available export subsidies (*i.e.*, Indonesia, Korea, and Thailand) from our surrogate value calculations. For those surrogate values not contemporaneous with the POR, we adjusted for inflation using the wholesale price indices for Egypt (or the relevant surrogate country), as published in the International Monetary Fund's publication, *International Financial Statistics*.

For a detailed description of all surrogate values used for Sidex, including market-economy inputs, *see* the Factor Valuation Memo.

We valued the factors of production as follows:

Pursuant to section 351.408(c)(1) of our regulations, we used the actual price paid by respondents for inputs purchased from a market-economy supplier and paid for in a market-economy currency, except when prices may have been distorted by subsidies. Thus, we used market-economy input prices for the following material inputs: coking coal, iron ore powder, iron pellets, iron lumps, sulfuric acid, ferromanganese, ferrosilicon, silicomanganese, ferrovanadium, ferrochrome, nickel, ferromolybdenum, ferroboron, calcium flouride, and slab.

We used Egyptian import statistical data for 2002 from the Egyptian Central Agency for Public Mobilization and Statistics (CAPMAS), the Egyptian government's official statistical agency, to value the following material inputs: manganese ore, metallurgical coke, iron scrap, caustic soda, aluminum, and lime.

We used Filipino import data for 2002 from the World Trade Atlas (WTA) to value the following material inputs: scale, slag, petroleum coke, ferrotitanium, and silicocalcium. To value limestone, we used Filipino import statistics for 2001 from the WTA because the 2002 data is aberrational for Egypt, the Philippines and Algeria. In addition, for limestone, we inflated this data to make the data contemporaneous with the POR.

For energy, we used an Egyptian electricity source from 2001 and we inflated this data to make the data contemporaneous with the POR. For methane gas, we used Filipino import data from WTA for 2002. For injected coal powder, we used Egyptian import data from CAPMAS for 2002.

For labor, we used the Romanian regression-based wage rate at Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in September 2003. *See http://www.ia.ita.doc.gov/wages/index.html.* Because of the variability of wage rates in countries with similar per capita gross domestic products, section 351.408(c)(3) of the Department's regulations requires the use of a regression-based wage rate. The source of these wage rate data on the Import Administration's Web site is the *Year Book of Labour Statistics 2001*, International Labour Office (Geneva: 2001), Chapter 5B: Wages in Manufacturing.

For by-products, we valued ammonium sulfate, crude benzene, and raw tar using Egyptian import data for 2002 from CAPMAS. For the remaining by-products (ammonia water, iron slag, coke gas, and furnace gas), we used Filipino import data from the WTA for 2002. Consistent with the final results of petroleum wax candles from China, we limited the by-product credit to the

amount actually produced and sold during the POR and not the amount sold during the POR, since Sidex reported that for several by-products, it sold more of the by-product than it produced during the POR. *See Notice of Final Results and Rescission, in Part, of the Antidumping Duty Administrative Review: Petroleum Wax Candles from the People's Republic of China*, 69 FR 12121, 12125 (March 15, 2004). Hence, we are adjusting Sidex's factors of production downward for the by-products in which Sidex reported these factors based on the sales quantity (which was more than the production quantity) and capping the factor based on the amount sold/produced during the POR.

To value packing materials (*i.e.*, wooden boards and steel straps or wire rod), we relied upon Egyptian import data from CAPMAS and Filipino import data from WTA for 2002, respectively.

To value factory overhead, SG&A, and profit, we relied upon publicly-available information in the 2002–2003 annual report of the Egyptian Iron & Steel Co. (Egyptian Iron), an integrated steel producer of subject merchandise in Egypt. Consistent with Department practice, we are using the financial statement for calculation of the overhead and SG&A (with interest) ratios of an integrated steel producer (Egyptian Iron) as a surrogate because Sidex is also an integrated steel producer and the experiences of Egyptian Iron are more reflective of Sidex's business experiences than of a non-integrated steel producer. *See Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Romania: Final Results of Antidumping Duty Administrative Review*, 68 FR 12672 (March 17, 2003) and Decision Memorandum at Comment 2 (where the Department stated that it is inappropriate to use the financial statement of fully integrated steel producer Al Ezz because Al Ezz's business experiences, which were more capital intensive and had different raw material and energy requirements, differed from respondent Silcotub, which is not an integrated steel producer). However, Egyptian Iron did not make a profit in the 2002–2003 period. Because it is the Department's practice to use a profit rate, we are using the profit rate from the financial statement of a non-integrated Egyptian steel producer (El Nasr Steel Pipes and Fittings Co.) for our calculations. *See Automotive Replacement Glass Windshields From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 69 FR 25545 (May 7, 2004) (where the Department used the financial statement of Asahi India Safety Glass Limited for the profit ratio because Saint-Gobain Sekurit India Limited, whose financial statement the Department used to calculate factory overhead and SG&A, incurred a loss during this time period).

To value truck freight rates, we used a 1999 rate (adjusted for inflation) provided by a trucking company located in Egypt. For rail transportation, we valued rail rates in Egypt using information used in *Titanium Sponge from the Republic of Kazakhstan: Notice of Final Results of Antidumping Duty Administrative Review*, 64 FR 66169 (November 24, 1999), which were initially obtained from a 1999 letter from the Egyptian International House. To value barge rates, we are using the truck rate because we do not have any surrogate value barge rates on the record of this proceeding.

For domestic brokerage and handling incurred in Romania, we used a 1999 rate (adjusted for inflation) provided by a trucking and shipping company located in Alexandria, Egypt. *See* Factor Valuation Memo.

For details on factor of production valuation calculations, *see* Factor Valuation Memo.

Currency Conversion

We made currency conversions pursuant to section 351.415 of the Department's regulations based on the rates certified by the Federal Reserve Bank.

The following sections refer to the ME portion of the POR (January 1, 2003, through July 31, 2003).

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products covered by the "Scope of the Antidumping Duty Order" section above, which were produced and sold by Sidex in the home market during the POR, to be foreign like product for the purpose of determining appropriate product comparisons to U.S. sales of subject merchandise. We relied on eight characteristics to match U.S. sales of subject merchandise to comparison sales of the foreign like product (listed in order of preference): (1) Painting; (2) quality; (3) specification and/or grade; (4) heat treatments; (5) standard thickness; (6) standard width; (7) whether or not checkered (floor plate); and (8) descaling. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's questionnaire. *See* Appendix V of the Department's antidumping duty questionnaire to Sidex dated October 24, 2003.

Normal Value Comparisons

To determine whether Sidex's sales of the subject merchandise from Romania to the United States were made at prices below NV, we compared the EP or CEP to the NV, as described in the "Export Price and Constructed Export Price" and "Normal Value" sections of this notice. Because Romania has been graduated to a market economy country (*see Romanian graduation*, 68 FR at 12673), consistent with the effective date of that graduation, January 1, 2003, to calculate NV, we have employed a non-market economy methodology for the period covering August 1, 2002 through December 31, 2002 and a market economy methodology for the period covering January 1, 2003 through July 31, 2003. Thus, there are two NV sections in the notice.

For the ME methodology, pursuant to section 777A(d)(2), we compared the export prices (or constructed export prices) of individual U.S. transactions to the monthly weighted-average normal value of the foreign like product where there were sales made in the ordinary course of trade.

Export Price and Constructed Export Price

In accordance with section 772(a) of the Act, export price is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c). In accordance with section 772(b) of the Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d). For purposes of this administrative review, Sidex has classified its sales as both EP and CEP. Sidex identified two channels of distribution for U.S. sales: (1) Sidex to MEI to unaffiliated steel traders who typically sell to reseller and end-users; and (2) Sidex to MEI to INA

and then to unaffiliated U.S. customers, who are distributors.

For U.S. sales channel one (*i.e.*, Sidex/MEI sales to unaffiliated steel traders), we based our calculation on EP, in accordance with section 772(a) of the Act, because the subject merchandise was sold by the producer or exporter directly to the first unaffiliated purchaser in the United States or for export to the United States prior to importation, and CEP methodology was not otherwise indicated. We calculated EP on the packed, delivered, tax and duty paid price to unaffiliated purchasers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight from the plant to the port of export, foreign brokerage and handling, international freight, marine insurance, U.S. brokerage and handling, other U.S. transportation expenses (*i.e.*, U.S. stevedoring, wharfage, and survey), and U.S. customs duty.

For U.S. sales channel two (*i.e.*, Sidex/MEI/INA sales to an unaffiliated U.S. customer), Sidex/MEI has reported these sales as CEP sales because the first sale to an unaffiliated party occurred in the United States. Therefore, for these channel two sales, we based our calculation on CEP, in accordance with subsections 772(b), (c), and (d) of the Act. Where applicable, we made a deduction to gross unit price for early payment discounts. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight from the plant to the port of export, foreign brokerage and handling, international freight, marine insurance, U.S. brokerage and handling, other U.S. transportation expenses (*i.e.*, U.S. stevedoring, wharfage, and survey), and U.S. customs duty. Also, in accordance with section 772(c)(2)(A) of the Act, we deducted packing expenses because packing expenses are included in CEP. In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (*i.e.*, imputed credit expenses, commissions, and bank expenses) and indirect selling expenses. For CEP sales, we also made an adjustment for profit in accordance with section 772(d)(3) of the Act. We deducted the profit allocated to expenses deducted under sections 772(d)(1) and 772(d)(2) in accordance with sections 772(d)(3) and 772(f) of the Act. In accordance with section 772(f) of the Act, we computed profit based on total revenue realized on sales in both the U.S. and home markets, less all expenses associated with those sales. We then allocated profit to expenses incurred with respect to U.S. economic activity, based on the ratio of total U.S. expenses to total expenses for both the U.S. and home markets.

Normal Value Using ME Methodology

As discussed above, consistent with the January 1, 2003 effective date of ME graduation, we have applied a ME methodology for the period covering January 1, 2003 through July 31, 2003.

1. Home Market Viability

We compared the aggregate volume of HM sales of the foreign like product and U.S. sales of the subject merchandise to determine whether the volume of the foreign like product sold in Romania was sufficient, pursuant to section 773(a)(1)(C) of the Act, to form a basis for NV. Because the volume of HM sales of the foreign like product was greater than five percent of the U.S. sales of subject merchandise, in accordance with section 773(a)(1)(B)(i) of the Act, we have based the determination of NV upon the HM sales of the foreign like product. Thus, we used as NV the prices at which the foreign like product was first sold for consumption in Romania, in the usual commercial quantities, in the ordinary course of trade, and, to the extent possible, at the same level of trade (LOT) as the EP or CEP sales, as appropriate. After testing home market viability, we calculated NV as noted in the "Price-to-Price Comparisons" section of this notice.

2. Arm's-Length Test

Sidex reported that it made sales in the HM to affiliated and unaffiliated customers. The Department did not require Sidex to report its affiliated party's downstream sales because these sales represented less than five percent of total HM sales. Sales to affiliated customers in the HM not made at arm's length were excluded from our analysis. To test whether these sales were made at arm's length, we compared the starting prices of sales to affiliated and unaffiliated customers net of all billing adjustments, movement charges, direct selling expenses, discounts and packing. Where the price to that affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise sold to the unaffiliated parties at the same level of trade, we determined that the sales made to the affiliated party were at arm's length. *See Antidumping Proceedings—Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (November 15, 2002).

3. Price-to-Price Comparisons

We based NV on the HM to unaffiliated purchasers and those affiliated customer sales which passed the arm's length test. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. We made adjustments, where applicable, for movement expenses (*i.e.*, inland freight from plant to distribution warehouse and warehousing expenses) in accordance with section 773(a)(6)(B) of the Act. We made circumstance-of-sale adjustments for imputed credit and interest revenue, where appropriate in accordance with section 773(a)(6)(C). In accordance with section 773(a)(6), we deducted HM packing costs and added U.S. packing costs. Where applicable, we modified the gross unit price based on billing adjustments. Finally, in accordance with section 773(a)(4) of the Act, where the Department was unable to determine NV on the basis of contemporaneous matches in accordance with 773(a)(1)(B)(i), we based NV on CV. We did not make any adjustments to Sidex's reported HM sales data in the calculation of NV.

Currency Conversion

We made currency conversions pursuant to section 351.415 of the Department's regulations at the rates certified by the Federal Reserve Bank.

Preliminary Results of Review

We note that although MEI was the exporter for all of Sidex's sales, because Sidex provided information that it had knowledge that the subject merchandise was destined for the United States, we have calculated a margin for both Sidex as the producer and MEI as the exporter. We preliminarily determine that the following margin is the weighted-average antidumping duty margin of all sales made in both the NME and ME portions of the POR:

Manufacturer/exporter	POR	Margin (percent)
Ispat Sidex, S.A.	08/01/02—07/30/03	33.19

Manufacturer/exporter	POR	Margin (percent)
Metalexportimport, S.A.	08/01/02—07/30/03	33.19

For details on the calculation of the antidumping duty weighted-average margin for Sidex and MEI, *see* the Analysis Memorandum for the Preliminary Results of the Administrative Review of the Antidumping Duty Order on Certain Cut-to-Length Carbon Steel Plate from Romania, dated August 30, 2004. A public version of this memorandum is on file in the CRU.

Assessment Rates

Pursuant to section 351.212(b), the Department calculates an assessment rate for each importer of the subject merchandise. Upon issuance of the final results of this review, if any importer-specific assessment rates calculated in the final results are above *de minimis* (*i.e.*, at or above 0.50 percent), the Department will issue appraisement instructions directly to the U.S. Customs and Border Protection (CBP) to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise. For assessment purposes, we calculated importer-specific assessment rates for the subject merchandise by aggregating the dumping duties due for all U.S. sales to each importer and dividing the amount by the total quantity of the sales to that importer. If these preliminary results are adopted in our final results of review, we will direct CBP to assess the resulting rate against the total quantity for the subject merchandise on each of Sidex's importer's/customer's entries during the POR.

Cash-Deposit Requirements

The following cash-deposit rates will be effective upon publication of the final results of this review for all shipments of certain cut-to-length carbon steel plate from Romania entered, or withdrawn from warehouse, for consumption on or after publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For subject merchandise exported by MEI or Sidex, the cash-deposit rate will be the rate established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not covered in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value (LTFV) investigation (*see Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from Romania*, 58 FR 37209 (July 9, 1993)), but the manufacturer is, the cash deposit rate will be the rate established in the most recent period for the manufacturer of the merchandise; and, (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be the "all others" rate described in the final results of this review. We invite comments on the value to be used for the "all others" rate.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

We note that the cash deposit rate established in the final results of this review will be applied prospectively to cover future entries. Given that the effective date of the Department's decision to treat Romania as an ME was within the POR, we have applied both NME and ME methodologies to calculate the antidumping margins in this review. The Department is considering whether it is more appropriate to base MEI's and Sidex's cash deposit rate on a weighted-average margin calculated using only sales from the seven-month ME portion of the POR or, alternatively, a weighted-average margin calculated using all sales from both the NME and ME portions of the POR. We invite comments on this issue.

Schedule for Final Results of Review

The Department will disclose calculations performed in connection with the preliminary results of this review within five days of the date of publication of this notice in accordance with section 351.224(b) of the Department's regulations. Any interested party may request a hearing within 30 days of publication of this notice in accordance with section 351.310(c) of the Department's regulations. Any hearing would normally be held 37 days after the publication of this notice, or the first workday thereafter, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) to the extent practicable, an identification of the arguments to be raised at the hearing.

Unless otherwise notified by the Department, interested parties may submit case briefs within 30 days of the date of publication of this notice in accordance with section 351.309(c)(ii) of the Department's regulations. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the case brief is filed. If a hearing is held, an interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief. Parties should confirm by telephone the time, date, and place of the hearing within 48 hours before the scheduled time. The Department will issue the final results of this review, which will include the results of its analysis of issues raised in the briefs, not later than 120 days after the date of publication of this notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under section 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and this notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 30, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E4–2080 Filed 9–3–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Notice of Amended Final Results of Antidumping Duty New Shipper Review: Fresh Garlic From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 7, 2004.

FOR FURTHER INFORMATION CONTACT: Susan Lehman or Minoo Hatten, AD/CVD Enforcement, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0180 and (202) 482–1690, respectively.

Amendment of Final Results

In accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the Act), on July 26, 2004, the Department of Commerce (the Department) issued its notice of final results of antidumping duty new shipper reviews of fresh garlic from the People's Republic of China (PRC).[1] On August 2, 2004, we received a timely ministerial-error allegation from Sunny Import & Export, Ltd. (Sunny), pursuant to 19 CFR 351.224(c)(2). On August 3, 2004, we received comments from the petitioners (the Fresh Garlic Producers Association and its individual members) concerning the final margin calculations for the Jinxiang Dong Yun Freezing Storage Co., Ltd. (Dong Yun). No other party alleged ministerial errors or submitted comments.

After analyzing the submissions, we have determined, in accordance with section 751(h) of the Act and 19 CFR 351.224(e), that we made a ministerial error in our calculation of the number of days Sunny's garlic was held in cold storage. Correcting this error resulted in a revised antidumping margin for Sunny. For a detailed discussion of this ministerial error, see the August 31, 2004, memorandum from Susan Lehman to the file entitled "Ministerial Error Allegation in the Final Results of the Antidumping Duty New Shipper Review of Sunny Import & Export, Ltd."

We have determined that the issues the petitioners raised in their comments concerning Dong Yun are not ministerial errors as described under section 751(h) of the Act and 19 CFR 351.224(e), and, therefore, have not made any changes to the *Final Results* with respect to Dong Yun. See the August 31, 2004, memorandum from Lyn Johnson to the file entitled "Comments on the Final Results of the Antidumping Duty New Shipper Review of Jinxiang Dong Yun Freezing Storage Co., Ltd."

Pursuant to section 751(h) of the Act and 19 CFR 351.224(e), we are amending the *Final Results* for Sunny. The revised antidumping margin is as follows:

Producer & Exporter	Original final margin (percent)	Amended final margin (percent)
Sunny Import and Export, Ltd.	33.66	13.81

Duty Assessment and Cash Deposit Requirements

The Department will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. With respect to Sunny, the Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the amended final results of review. Further, the following cash-deposit requirements will be effective upon publication of these amended final results of review for shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these amended final results, as provided by section 751(a)(2)(C) of the Act: (1) For subject merchandise grown and exported by Sunny Import and Export, Ltd., the cash-deposit rate will be the rate listed above; (2) for all other subject merchandise exported by Sunny Import and Export, Ltd., the cash-deposit rate will be the PRC-wide rate, which is 376.76 percent; (3) for all other PRC exporters of subject merchandise (including merchandise produced and/or supplied by Sunny Import and Export, Ltd.) which have not been found to be entitled to a separate rate, the cash-deposit rate will be the PRC-wide rate of 376.76 percent; (4) for all non-PRC exporters of subject merchandise, the cash-deposit rate will be the rate applicable to the PRC exporter that supplied that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

With respect to Dong Yun, the duty assessment and cash deposit requirements remain the same (see the *Final Results* at 69 FR 46500).

The amended final results are issued and published pursuant to sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: August 31, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–20250 Filed 9–3–04; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–605]

Frozen Concentrated Orange Juice From Brazil; Final Results of the Expedited Sunset Review of the Antidumping Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset review of the antidumping order on frozen concentrated orange juice from Brazil.

SUMMARY: On April 1, 2004, the Department of Commerce ("the Department") initiated a sunset review of the antidumping duty order on frozen concentrated orange juice ("FCOJ") from Brazil pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and an adequate substantive response filed on behalf of domestic interested parties and inadequate response from respondent interested parties, the Department conducted an expedited (120-day) sunset review. As a result of this sunset review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. The dumping margins are identified in the Final Results of Review section of to this notice.

EFFECTIVE DATE: September 7, 2004.

FOR FURTHER INFORMATION: Hilary E. Sadler, Esq., Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4340.

[1] See *Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty New Shipper Reviews*, 69 FR 47498 (August 3, 2004) (*Final Results*).

SUPPLEMENTARY INFORMATION:

Background

On April 1, 2004, the Department published the notice of initiation of the sunset review of the antidumping duty order on FCOJ from Brazil.[1] On April 16, 2004, the Department received a Notice of Intent to Participate from Florida Citrus Mutual; Citrus Belle; Citrus World, Inc.; Peace River Citrus Products, Inc.; and Southern Gardens Citrus Processors Corporation (collectively "domestic interested parties") within the deadline specified in section 315.218(d)(1)(i) of the Department's regulations. The domestic interested parties claimed interested party status under section 771(9)(C) of the Act, as U.S. producers of FCOJ. On May 3, 2004, the Department received complete substantive responses from the domestic interested parties within the deadline specified in section 351.218(d)(3)(i) of the Department's regulations. We did not receive responses from any respondent interested parties to this proceeding, except a participation waiver from Citrovita Agro Industrial, Ltda., a respondent interested party. *See* response of Citrovita Agro Industrial, Ltda., "FCOJ from Brazil Sunset Review: Clarification" (May 10, 2004). As a result, pursuant to section 751(c)(3)(B) of the Act and section 351.218(e)(1)(ii)(C)(2) of the Department's regulations, the Department determined to conduct an expedited review of this order.

Scope of the Order

The merchandise covered by this order is FCOJ from Brazil. The merchandise is currently classifiable under subheading 2009.11.00 of the Harmonized Tariff Schedule United States ("HTS"). The HTS subheading is provided for convenience and customs purposes. The written description remains dispositive.

Analysis of Comments Received

All issues raised in these reviews are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Ronald K. Lorentzen, Acting Director, Office of Policy, Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, dated August 30, 2004, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the order were to be revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in room B–099 of the main Commerce Building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/frn*, under the heading "September 2004." The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Reviews

We determine that revocation of the antidumping duty order on FCOJ from Brazil would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average percentage margins:

Manufacturers/exporters/producers	Weighted average margin (percent)
Citrovita	15.98
All Others	1.96

We are issuing and publishing the results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: August 30, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E4–2082 Filed 9–3–04; 8:45 am]

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[1] *See Initiation of Five-Year ("Sunset") Reviews*, 69 FR 17129 (April 1, 2004) ("Initiation Notice").

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–501, A–588–846]

Natural Bristle Paint Brushes and Brush Heads From the People's Republic of China and Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Japan; Extension of Final Results of Expedited Sunset Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for final results of expedited sunset reviews: natural bristle paint brushes and brush heads from the People's Republic of China and certain hot-rolled flat-rolled carbon-quality steel products from Japan.

SUMMARY: The Department of Commerce ("the Department") is extending the time limit for its final results in the expedited sunset reviews of the antidumping duty orders on natural bristle paint brushes and brush heads from the People's Republic of China ("PRC") and certain hot-rolled flat-rolled carbon-quality steel products ("hot-rolled steel") from Japan. Based on adequate responses from the domestic interested parties and inadequate responses from respondent interested parties, the Department is conducting expedited sunset reviews to determine whether revocation of the antidumping duty orders would lead to the continuation or recurrence of dumping. As a result of this extension, the Department intends to issue final results of these sunset reviews on or about October 15, 2004.

EFFECTIVE DATE: September 7, 2004.

FOR FURTHER INFORMATION CONTACT: Hilary E. Sadler, Esq. (PRC) or Martha Douthit (Japan), Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4340 or 482–5050.

Extension of Final Results

In accordance with section 751(c)(5)(C)(ii) of the Tariff Act of 1930, as amended ("the Act"), the Department may treat sunset reviews as extraordinarily complicated if the issues are complex in order to extend the period of time under section 751(c)(5)(B) of the Act for making a sunset determination. As discussed below, the Department has determined that these reviews are extraordinarily complicated. On May 3, 2004, the Department published its notice of initiation of sunset reviews of the antidumping duty orders on natural bristle paint brushes and brush heads from the PRC and hot-rolled steel from Japan. *See Initiation of Five-Year (Sunset) Reviews*, 69 FR 24118 (May 3, 2004). The Department determined that it would conduct expedited sunset reviews of these antidumping duty orders based on responses from the domestic interested parties and no responses from the respondent interested parties to the notice of initiation. The Department's final results of these reviews were scheduled for August 31, 2004; however, the Department needs additional time for its analysis to examine certain complex issues. Specifically in the natural bristle paint brushes and brush heads case, the Department is analyzing issues surrounding import volumes. Concerning hot-rolled steel, the Department needs additional time to analyze the issues raised by the parties.

Therefore, Department needs additional time for its analysis in making its final determinations.

Because of the complex issues in these proceedings, the Department will extend the deadline for issuance of the final results. Thus, the Department intends to issue the final results on or about October 15, 2004, in accordance with sections 751(c)(5)(B) and (C)(ii) of the Act.

Dated: August 31, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E4–2083 Filed 9–3–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–485–805]

Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe From Romania: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review and Preliminary Determination Not To Revoke in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to a request by S.C. Silcotub S.A. (Silcotub), a producer/exporter of subject merchandise, and in response to a request by United States Steel Corporation (the petitioner), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain small diameter carbon and alloy seamless standard, line, and pressure pipe (seamless pipe) from Romania. The period of review (POR) is August 1, 2002, through July 31, 2003.

We preliminarily find that sales have been made below normal value (NV). If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on the subject merchandise that was exported by Silcotub and entered during the POR. Because the preliminary margin for Silcotub in this review is above *de minimis*, we also preliminarily determine not to revoke the order in part with respect to that company. Finally, we are rescinding the review of S.C. Petrotub S.A. (Petrotub) because the petitioner withdrew its request for a review of that company.

EFFECTIVE DATE: September 7, 2004.

FOR FURTHER INFORMATION CONTACT: David Layton at (202) 482–0371 or Erin Begnal at (202) 482–1442, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On August 10, 2000, the Department published an antidumping duty order on certain small diameter carbon and alloy seamless standard, line, and pressure pipe from Romania. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe From Romania*, 65 FR 48963 (August 10, 2000). On August 1, 2003, the Department published a notice of opportunity to request an administrative review of this order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 68 FR 45218. On August 29, 2003, in accordance with 19 CFR 351.213(b)(2), Silcotub requested a review. In addition, in accordance with 19 CFR 351.222(e), Silcotub requested that the Department revoke the order with regard to Silcotub, pursuant to 19 CFR 351.222(b)(2). On September 2, 2003, the petitioner requested reviews of Silcotub and Petrotub, producers/exporters of certain small diameter carbon and alloy seamless standard, line, and pressure pipe from Romania.

On September 30, 2003, the Department published a notice of initiation of administrative review of the antidumping duty order on certain small diameter carbon and alloy seamless standard, line, and pressure pipe from Romania, covering the period August 1, 2002, through July 31, 2003. *Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation in Part and Deferral of Administrative Review*, 68 FR 56262. On March 31, 2004, the Department published a notice of *Extension of the Time Limit for the Preliminary Results of Antidumping Duty Administrative Review* (69 FR 16893), extending the deadline for the issuance of the preliminary results by 90 days. On July 2, 2004, the Department published a second notice of *Extension of the Time Limit for the Preliminary Results of Antidumping Duty Administrative Review* (69 FR 16893), extending the deadline for the issuance of the preliminary results until no later than August 30, 2004. We are conducting this review under Section 751(a) of the Tariff Act of 1930, as amended (the Act).

Romania's designation as a non-market-economy (NME) country remained in effect until January 1, 2003.[1] Since the first five months of the period of review (POR) fell before Romania's graduation to market-economy status and the last seven months of this POR came after its graduation, in its antidumping questionnaire to Silcotub, dated November 14, 2003, the Department determined that it would treat Romania as an NME country from August 1, 2002, through December 31, 2002, and a market-economy (ME) country from January 1, 2003, through July 31, 2003. The first part of this notice refers to the NME portion of the POR (NME POR) and the Department's NME methodology, and the second part of this notice refers to the ME portion of the POR (ME POR) and the Department's ME methodology. In the section of this notice entitled *Preliminary Results of the Review*, we have calculated a weighted-average dumping margin reflecting the margin we calculated for the NME POR and the dumping margin we calculated for the ME POR. This weighted-average figure reflects the margin of dumping for the entire POR.

Partial Rescission of Antidumping Duty Administrative Review

On November 12, 2003, the petitioner withdrew its request for a review of Petrotub. Because there was no other request for a review of Petrotub and because the letter withdrawing its request for a review was timely filed, we are rescinding the review with respect to Petrotub in accordance with 19 CFR 351.213(d)(1).

[1] In *Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Romania: Final Results of Antidumping Duty Administrative Review*, 68 FR 12672, 12673 (March 17, 2003), the Department reviewed the non-market-economy status of Romania and determined to reclassify Romania as a market economy for purposes of antidumping and countervailing duty proceedings, pursuant to section 771(18)(A) of the Act, effective January 1, 2003. *See* Memorandum from Lawrence Norton, Import Policy Analyst, to Joseph Spetrini, Acting Assistant Secretary for Import Administration: Antidumping Duty Administrative Review of Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Romania—Non-Market Economy Status Review (March 10, 2003).

Scope of the Order

The products covered by the order are seamless carbon and alloy (other than stainless) steel standard, line, and pressure pipes and redraw hollows produced, or equivalent, to the ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335, ASTM A–589, ASTM A–795, and the API 5L specifications and meeting the physical parameters described below, regardless of application. The scope of the order also includes all products used in standard, line, or pressure pipe applications and meeting the physical parameters described below, regardless of specification. Specifically included within the scope of the order are seamless pipes and redraw hollows, less than or equal to 4.5 inches (114.3 mm) in outside diameter, regardless of wall-thickness, manufacturing process (hot finished or cold-drawn), end finish (plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish.

The seamless pipes subject to the order are currently classifiable under the subheadings 7304.10.10.20, 7304.10.50.20, 7304.31.30.00, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the Harmonized Tariff Schedule of the United States (HTSUS).

Specifications, Characteristics, and Uses: Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gases in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the ASTM A–106 standard may be used in temperatures of up to 1000 degrees Fahrenheit, at various ASME code stress levels. Alloy pipes made to ASTM A–335 standard must be used if temperatures and stress levels exceed those allowed for ASTM A–106. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A–106 standard.

Seamless standard pipes are most commonly produced to the ASTM A–53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements. If exceptionally low temperature uses or conditions are anticipated, standard pipe may be manufactured to ASTM A–333 or ASTM A–334 specifications.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification.

Seamless water well pipe (ASTM A–589) and seamless galvanized pipe for fire protection uses (ASTM A–795) are used for the conveyance of water.

Seamless pipes are commonly produced and certified to meet ASTM A–106, ASTM A–53, API 5L–B, and API 5L–X42 specifications. To avoid maintaining separate production runs and separate inventories, manufacturers typically triple or quadruple certify the pipes by meeting the metallurgical requirements and performing the required tests pursuant to the respective specifications. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A–106 pressure pipes and triple or quadruple certified pipes is use in pressure piping systems by refineries, petrochemical plants, and chemical plants. Other applications are in power generation plants (electrical-fossil fuel or nuclear), and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. A minor application of this product is for use as oil and gas distribution lines for commercial applications. These applications constitute the majority of the market for the subject seamless pipes. However, ASTM A–106 pipes may be used in some boiler applications.

Redraw hollows are any unfinished pipe or "hollow profiles" of carbon or alloy steel transformed by hot rolling or cold drawing/hydrostatic testing or other methods to enable the material to be sold under ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335, ASTM A–589, ASTM A–795, and API 5L specifications.

The scope of the order includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, with the exception of the specific exclusions discussed below, and whether or not also certified to a non-covered specification. Standard, line, and pressure applications and the above-listed specifications are defining characteristics of the scope of the order. Therefore, seamless pipes meeting the physical description above, but not produced to the ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335, ASTM A–589, ASTM A–795, and API 5L specifications shall be covered if used in a standard, line, or pressure application, with the exception of the specific exclusions discussed below.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in ASTM A–106 applications. These specifications generally include ASTM A–161, ASTM A–192, ASTM A–210, ASTM A–252, ASTM A–501, ASTM A–523, ASTM A–524, and ASTM A–618. When such pipes are used in a standard, line, or pressure pipe application, with the exception of the specific exclusions discussed below, such products are covered by the scope of the order.

Specifically excluded from the scope of the order is boiler tubing and mechanical tubing, if such products are not produced to ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335, ASTM A–589, ASTM A–795, and API 5L specifications and are not used in standard, line, or pressure pipe applications. In addition, finished and unfinished OCTG are excluded from the scope of the order, if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in standard, line or pressure applications.

With regard to the excluded products listed above, the Department will not instruct CBP to require end-use certification until such time as the petitioner or other interested parties provide to the Department a reasonable basis to believe or suspect that the products are being used in a covered application. If such information is provided, we will require end-use certification only for the product(s) (or specification(s)) for which evidence is provided that such products are being used in covered applications as described above. For example, if, based on evidence provided by petitioner, the Department finds a reasonable basis to believe or suspect that seamless pipe produced to the A–161 specification is being used in a standard, line or pressure application, we will require end-use certifications for imports of that specification. Normally we will require only the importer of record to certify to the end use of the imported merchandise. If it later proves necessary

for adequate implementation, we may also require producers who export such products to the United States to provide such certification on invoices accompanying shipments to the United States.

Although the HTSUS subheadings are provided for convenience and CBP purposes, our written description of the merchandise subject to this scope is dispositive.

Verification

As provided in sections 782(i)(2) of the Act, in June and July 2004 we verified information provided by Silcotub. We used standard verification procedures, including on-site inspection of the respondent producer's facilities and examination of relevant sales and financial records.

Analysis of the NME POR

Separate Rates

As stated above, since Romania was classified as an NME country until January 1, 2003, we are treating Romania as an NME country for the first five months of the POR, from August 1, 2002, through December 31, 2002.

It is the Department's standard policy to assign all exporters subject to review in an NME country a single rate unless an exporter can demonstrate an absence of government control, both in law and in fact, with respect to exports. To establish whether an exporter is sufficiently independent of government control to be entitled to a separate rate, the Department analyzes the exporter in light of the criteria established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*), as amplified in *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*). Under this test, exporters in NME countries are entitled to separate, company-specific margins when they can demonstrate an absence of government control over exports, both in law (*de jure*) and in fact (*de facto*).

Absence of De Jure Control

Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses, (2) any legislative enactments decentralizing control of companies, and (3) any other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR at 20589.

Absence of De Facto Control

A *de facto* analysis of absence of government control over exports is based on four factors—whether the respondent (1) sets its own export prices independently of the government and other exporters, (2) retains the proceeds from its export sales and makes independent decisions regarding the disposition of profits or financing of losses, (3) has the authority to negotiate and sign contracts and other agreements, and (4) has autonomy from the government regarding the selection of management. *See Silicon Carbide*, 59 FR at 22587; *see also Sparklers*, 56 FR at 20589.

We have determined, according to the criteria identified in *Sparklers* and *Silicon Carbide*, that evidence on the record demonstrates an absence of government control, both in law and in fact, with respect to exports by Silcotub. Silcotub is a private joint-stock commercial company organized under the Romanian Commercial Companies Law, Law No. 31/1990, as amended. Silcotub is limited only by its articles of incorporation and bylaws. Specifically, the information on the record shows that Silcotub is autonomous in selecting its management, negotiating and signing contracts, setting its own export prices, and retaining its own profits. For a complete discussion of the Department's analysis regarding Silcotub's entitlement to a separate rate, *see* the August 30, 2004, memorandum, Assignment of Separate Rates for S.C. Silcotub S.A., which is on file in the Central Record Unit (CRU), Room B–099, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230.

Constructed Export Price

For all sales made by Silcotub to the United States, we used constructed export price (CEP) in accordance with section 772(b) of the Act because the first sale to an unaffiliated purchaser occurred after importation of the merchandise into the United States. We calculated CEP based on the packed, ex-warehouse or delivered prices from Silcotub's U.S. affiliate to unaffiliated customers. In accordance with section 772(c) of the Act, we made deductions, where appropriate, from the starting price for CEP for foreign inland freight, foreign brokerage and handling, international freight, marine insurance, CBP duties, U.S. brokerage and handling, and other U.S. transportation expenses such as wharfage, stevedoring, and surveying. For the deductions of foreign inland freight and foreign brokerage and handling, we used Egyptian surrogate values because these services were provided by Romanian companies and paid for in Romanian lei. In accordance with section 772(d)(1) of the Act, we made further deductions for the following selling expenses that related to economic activity in the United States: credit expenses, direct selling expenses (*i.e.*, bank charges incurred in the United States and in Switzerland), and indirect selling expenses (incurred in both the United States and Switzerland, and including inventory carrying costs). In accordance with section 772(d)(3) of the Act, we have deducted from the starting price an amount for profit.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the NV using a factors-of-production methodology if the merchandise is exported from an NME country, and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value (CV) under section 773(a) of the Act.

As discussed above, the Department is treating Romania as a NME country for the period August 1, 2002, through December 31, 2002. Furthermore, information available on the record of this review does not permit the calculation of NV using home-market prices, third-country prices, or CV under section 773(a) of the Act. Thus, the Department calculated NV for the NME portion of this review by valuing the factors of production in a surrogate country.

Surrogate Country

Section 773(c)(4) of the Act requires the Department to value the NME producer's factors of production, to the extent possible, in one or more market-economy countries that are at a level of economic development comparable to that of the NME and are significant producers of comparable merchandise. We chose Egypt as the surrogate country on the basis of the criteria set out in 19 CFR 351.408(b). For a further discussion of our surrogate-country selection, see the August 30, 2004, memorandum entitled Selection of Surrogate Country. This memorandum is on file in the Department's CRU.

Factors of Production

We used publicly available information from Egypt to value the various factors of production. Because some of the Egyptian data were not contemporaneous with the POR, we adjusted the data to the POR using the Egyptian wholesale price index (WPI)

published by the International Monetary Fund.

In accordance with section 773(c) of the Act, we valued Silcotub's reported factors of production by multiplying them by publicly available Egyptian values. In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices to make them delivered prices. We added to Egyptian surrogate values a surrogate freight cost using the reported distance from each supplier to the factory because this distance was shorter than the distance from the nearest seaport to the factory. This adjustment is in accordance with the decision of the Court of Appeals for the Federal Circuit in *Sigma Corp.* v. *United States*, 117 F.3d 1401 (Fed. Cir. 1997).

We valued material inputs and packing material (*i.e.*, where applicable, plastic caps, plastic tags, lacquer, and ink) by Harmonized Tariff Schedule (HTS) number using import statistics from the Egyptian Central Agency for Public Mobilization and Statistics, National Information Center. Where a material input was purchased in a market-economy currency from a market-economy supplier (*i.e.*, billet, steel strap, and clips), we valued the input at the actual purchase price in accordance with 19 CFR 351.408(c)(1). Although Silcotub purchased billets from both a market-economy supplier and non-market-economy supplier, we have valued all billets based on the price for the market-economy purchase. This methodology is consistent with 19 CFR 351.408(c)(1), which explains that the Department will normally value the factor using the price paid to the market-economy supplier where a portion of a factor is purchased from a market economy and the remainder is purchased from an NME supplier.

We valued labor using the method described in 19 CFR 351.408(c)(3). For a complete analysis of surrogate values, *see* the August 30, 2004, memorandum, Factors-of-Production Valuation for Preliminary Results (Valuation Memorandum), on file in the CRU.

To value electricity, we used the 2001 electricity rates for Egypt reported on the Web site of the International Trade Administration under "Trade Information Center." *See http://www.web.ita.doc.gov/ticwebsite/neweb.nsf/*. We based the value of natural gas in Egypt on a published article that shows the price at which the Government of Egypt purchased natural gas, which was also used in the final results of the previous administrative review and placed on the record of this review.[2]

We based our calculation of factory overhead and selling, general, and administrative (SG&A) expenses, as well as profit, on 1998/1999 financial statements of El-Nasr Steel Pipes & Fittings Co. (El-Nasr), an Egyptian producer of comparable merchandise. The Department used the 1998/1999 financial statements of El-Nasr in the final results of the previous review and placed on the record of this review. These are the most recent available financial statements from El-Nasr reflecting a profit. We reviewed information on El-Nasr from more recent financial periods (2001–2002 and 2002–2003) and found that the company made no profit in those periods, and the publicly available information lacked sufficient detail to estimate overhead costs.[3] We were not able to obtain more detailed company information from the more recent periods for El-Nasr or any other producers from our list of surrogate countries. For a discussion of the Department's analysis regarding surrogate countries, see the August 30, 2004, memorandum, Selection of Surrogate Country, which is on file in the CRU.

To value truck freight rates, we used a 1999 rate (adjusted for inflation) provided by a trucking company located in Egypt. For rail transportation, we used rail rates in Egypt, information also used in *Titanium Sponge from the Republic of Kazakhstan: Notice of Final Results of Antidumping Duty Administrative Review*, 64 FR 66169 (November 24, 1999), which we obtained from a 1999 letter from the Egyptian International House. We adjusted these rail rates for inflation. For further details, *see* the Valuation Memorandum.

For brokerage and handling, we used a 1999 rate (adjusted for inflation) provided by a trucking and shipping company located in Alexandria, Egypt. For further details, *see* the Valuation Memorandum.

Currency Conversion

We made currency conversions in accordance with section 773A(a) of the Act. For currency conversions involving the Egyptian pound, we used daily exchange rates published by the Federal Reserve Bank.

Analysis of the ME POR

Product Comparisons

We compared the CEP to the NV, as described in the *Constructed Export Price* and *Normal Value* sections below, for the market-economy portion of the POR. We first attempted to compare contemporaneous sales in the U.S. and home market of products that were identical with respect to the following characteristics: specification, manufacturing process, outside diameter, schedule, wall thickness, surface finish, and end finish. Where we were unable to compare sales of identical merchandise, we compared products sold in the United States with the most similar merchandise sold in the home market based on the characteristics listed above in that order of priority. Where there were no appropriate home-market sales of comparable merchandise, we compared the merchandise sold in the United States to CV in accordance with section 773(a)(4) of the Act.

Constructed Export Price

As mentioned in the NME section of this notice, for all sales made by Silcotub to the United States, we used CEP in accordance with section 772(b) of the Act because the first sale to an unaffiliated purchaser occurred after importation of the merchandise into the United States. We calculated CEP based on the packed, ex-warehouse or delivered prices from Silcotub's U.S. affiliate to unaffiliated customers. In accordance with section 772(c) of the Act, we made deductions, where appropriate, from the starting price for CEP for foreign inland freight, foreign brokerage and handling, international freight, marine insurance, CBP duties, U.S. brokerage and handling, and other U.S. transportation expenses such as wharfage, stevedoring, and surveying. In accordance with section 772(d)(1) of the Act, we made further deductions for the following selling expenses that related to economic activity in the United States: credit expenses, direct selling expenses (*i.e.*, bank charges incurred in the United States and in Switzerland), and indirect selling expenses (incurred in both the United States and Switzerland, and including inventory carrying costs). In accordance with section 772(d)(3) of the Act, we have deducted from the starting price an amount for profit.

[2] *See Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Romania: Final Results of Antidumping Administrative Review*, 68 FR 54418 (September 17, 2003), and corresponding Issues and Decisions Memorandum at Comment 2. *See also* Valuation Memorandum.

[3] *See http://www.micor.com.eg/micor/welcome05.htm*, El-Nasr's Web site.

Normal Value

A. Selection of Comparison Market

In order to determine whether there was a sufficient volume of sales in the home-market to serve as a viable basis for calculating NV, we compared Silcotub's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise in accordance with section 773(a)(1)(C) of the Act. Because Silcotub's aggregate volume of home-market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable. We calculated NV as discussed in the *Calculation of Normal Value Based on Home-Market Prices* and *Calculation of Normal Value Based on Constructed Value* sections below.

B. Cost-of-Production Analysis

On January 30, 2004, the petitioner made a sales-below-cost allegation concerning sales by Silcotub in the home market. Based on this allegation and in accordance with section 773(b)(2)(A)(i) of the Act, we found reasonable grounds to believe or suspect that home-market sales of certain small diameter carbon and alloy seamless standard, line, and pressure pipe from Romania were made at prices below the cost of production (COP). *See* Petitioner's Allegation of Sales Below the Cost of Production for S.C. Silcotub S.A. Memorandum from Martin Claessens to Holly Kuga, Acting Deputy Assistant Secretary, dated February 20, 2004, on file in the CRU. As a result, the Department has conducted a COP inquiry to determine whether Silcotub made sales in the home market at prices below its COP during the POR within the meaning of section 773(b) of the Act. We conducted the COP analysis described below.

1. Calculation of Cost of Production. In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for home-market general and administrative (G&A) expenses, selling expenses, packing expenses, and interest expenses. We relied on the COP data submitted by Silcotub in its response to the COP questionnaire.

2. Startup Adjustment. Section 773(f)(1)(C)(ii) of the Act authorizes adjustments for startup operations "only where (I) a producer is using new production facilities or producing a new product that requires substantial additional investment, and (II) production levels are limited by technical factors associated with the initial phase of commercial production. For purposes of subclause (II), the initial phase of commercial production ends at the end of the startup period. In determining whether commercial production levels have been achieved, the administering authority shall consider factors unrelated to startup operations that might affect the volume of production processed, such as demand, seasonality, or business cycles." Moreover, the *Statement of Administrative Action Accompanying the Uruguay Round Agreement Act*, H. Doc. No. 103–315, Vol. 1 (*SAA*), at 836 directs that attainment of peak production levels will not be the standard for identifying the end of the startup period because the startup period may end well before a company achieves optimum capacity utilization. In addition, the *SAA* indicates that the Department will not extend the startup period so as to cover improvements and cost reductions that may occur over the entire life cycle of the product. The *SAA* instructs further that a producer's projections of future volume or cost will be accorded little weight, as actual data regarding production are much more reliable than a producer's expectations. The *SAA* also states that the burden is on the respondent to demonstrate its entitlement to a startup adjustment; specifically, the respondent must demonstrate that production levels were limited by technical factors associated with the initial phase of commercial production and not by factors unrelated to startup, such as marketing difficulties or chronic production problems.

Silcotub claimed a startup adjustment for a modernization project commissioned during January to April 2003, with the startup period falling from April to August 2003, which included installing new equipment and replacing parts of the core production lines in its factory in order to extend the company's product range. We preliminarily determine that the statute's requirements for granting Silcotub a startup adjustment have not been met, as Silcotub is not producing a new product that required substantial investment. We recognize that Silcotub was unable to produce seamless pipe greater than 4.5 inches in diameter prior to the upgrade and is now able to produce pipe up to 5.75 inches in diameter, but we preliminarily view Silcotub's modernization as a limited expansion of its product range.

3. Test of Home-Market Sales Prices. We compared the adjusted weighted-average COP to the home-market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP within an extended period of time (*i.e.*, a period of one year) in substantial quantities and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. On a model-specific basis, we compared the revised COP to the home-market prices, less any applicable movement charges, discounts, and rebates.

4. Results of the COP Test. We disregard below-cost sales where 20 percent or more of a respondent's sales of a given product during the POR were made at prices below the COP and thus were made within an extended period of time in substantial quantities in accordance with sections 773(b)(2)(B) and (C) of the Act and based on comparisons of price to weighted-average COPs for the POR. In this instance, we determined that the below-cost sales of the product were made at prices which would not permit recovery of all costs within a reasonable time period, in accordance with section 773(b)(2)(D) of the Act. We found that Silcotub made sales below cost, and we disregarded such sales where appropriate.

C. Calculation of Normal Value Based on Home-Market Prices

For those sales at prices above COP, we based NV on home-market prices. Home-market starting prices were based on packed prices to unaffiliated purchasers in the home market. We made adjustments, where applicable, for packing and movement expenses in accordance with sections 773(a)(6)(A) and (B) of the Act. We also made adjustments for differences in costs attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act. For comparison to CEP, we deducted home-market direct selling expenses pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(c). In addition, because the NV level of trade is more remote from the factory than the CEP level of trade and available data provide no appropriate basis to determine a level-of-trade adjustment between NV and CEP, we made a CEP offset adjustment pursuant to section 773(a)(7)(B) of the Act (*see* the *Level of Trade* section, below).

D. Calculation of Normal Value Based on Constructed Value

In accordance with section 773(a)(4) of the Act, we used CV as the basis for NV when there were no above-cost contemporaneous sales of identical or similar merchandise in the comparison

market. We calculated CV in accordance with section 773(e) of the Act. We included the cost of materials and fabrication, SG&A, and profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country. For selling expenses, we used the weighted-average home-market selling expenses.

Level of Trade/CEP Offset

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade as the CEP transaction. The NV level of trade is that of the starting price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For CEP, it is the level of the constructed sale from the exporter to the importer. Moreover, for CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit, pursuant to section 772(d) of the Tariff Act. *See Micron Technology, Inc.* v. *United States*, 243 F.3d 1301, 1314–1315 (Fed. Cir. 2001). To determine whether NV sales are at a different level of trade than CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different level of trade, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP affect price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Final Determination of Sales at Less Than Fair Value: Greenhouse Tomatoes From Canada*, 67 FR 8781 (February 26, 2002).

In implementing these principles in this review, we asked Silcotub to identify the specific differences and similarities in selling functions and support services between all phases of marketing in the home market and the United States. Silcotub identified one channel of distribution in the home market and two customer categories in the home market, end-users and distributors. For a description of the selling functions performed in the home market by Silcotub, *see* the Analysis Memorandum. Based on our analysis of selling functions for Silcotub's two customer categories in the home market, we determined that one level of trade exists for Silcotub's home-market sales.

For the U.S. market, Silcotub also reported one channel of distribution, CEP sales made through Silcotub's affiliated importer, Duferco Steel. All U.S. sales were CEP transactions. Therefore, the U.S. market has one level of trade. For a description of the selling functions performed by Silcotub for CEP sales, *see* the Analysis Memo. We compared CEP sales (after deductions made pursuant to section 772(d) of the Act) to home-market sales, and we determined that the differences in selling functions performed for home-market and CEP transactions indicate that home-market sales involved a more advanced stage of distribution than CEP sales.

Based on our analysis, we determined that CEP and the starting price of home-market sales represent different stages in the marketing process and are thus at different levels of trade. Therefore, when we compared CEP sales to home-market sales, we examined whether a level of trade adjustment may be appropriate. In this case Silcotub sold at one level of trade in the home market; therefore, there is no basis upon which to determine whether there is a pattern of consistent price differences between levels of trade. Further, we do not have the information which would allow us to examine pricing patterns of Silcotub's sales of other similar products, and there is no other record evidence upon which such an analysis could be based. Because the data available do not provide an appropriate basis for making a level-of-trade adjustment but the level of trade in Romania for Silcotub is at a more advanced stage than the level of trade of its CEP sales, a CEP offset is appropriate in accordance with section 773(a)(7)(B) of the Act, as claimed by Silcotub. This offset is equal to the amount of indirect selling expenses incurred in the home market not exceeding the amount of indirect selling expenses deducted from the U.S. price in accordance with 772(d)(1)(D) of the Act. We applied the CEP offset to NV, whether based on home-market prices or CV.

Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A of the Act, based on exchange rates in effect on the date of the U.S. sale, as certified by the Federal Reserve Bank.

Preliminary Determination Not To Revoke

The Department "may revoke, in whole or in part" an antidumping duty order upon completion of a review under section 751 of the Act. While Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation of a company from the order based on an absence of dumping. This procedure is described in 19 CFR 351.222(b)(2). Revocation under that provision requires, *inter alia*, that a company requesting revocation from the order must submit the following: (1) A certification that the company has sold the subject merchandise at not less than NV in the current review period and that the company will not sell at less than NV in the future; (2) a certification that the company sold the subject merchandise in commercial quantities in each of the three years forming the basis of the revocation request; and (3) an agreement to reinstatement in the order or suspended investigation, as long as any exporter or producer is subject to the order (or suspended investigation), if the Secretary concludes that the exporter or producer, subsequent to the revocation, sold the subject merchandise at less than NV. *See* 19 CFR 351.222(e)(1). The Department will consider the following in determining whether to revoke the order in part: (1) Whether the producer or exporter requesting revocation has sold subject merchandise at not less than NV for a period of at least three consecutive years; (2) whether the continued application of the antidumping duty order is otherwise necessary to offset dumping; and (3) whether the producer or exporter requesting revocation in part has agreed in writing to immediate reinstatement of the order, as long as any exporter or producer is subject to the order, if the Department concludes that the exporter or producer, subsequent to revocation, sold the subject merchandise at less than NV. *See* 19 CFR 351.222(b)(2); *see also Notice of Final Results of Antidumping Duty Administrative Review, and Partial Rescission of Antidumping Duty Administrative Review, and Revocation of Antidumping*

Duty Order in Part: Certain Pasta From Italy, 67 FR 300–303 (January 3, 2002).

On August 29, 2003, Silcotub submitted a request, in accordance with 19 CFR 351.222(e)(1), that the Department revoke the order in part on certain small diameter carbon and alloy seamless standard, Line, and pressure pipe from Romania with respect to its sales. In accordance with 19 CFR 351.222(e)(1), the request was accompanied by certifications from Silcotub that, for three consecutive years, including this review period, it sold the subject merchandise in commercial quantities at not less than NV and would continue to do so in the future. Silcotub also agreed to its immediate reinstatement in this antidumping order, as long as any producer or exporter is subject to the order, if the Department concludes, subsequent to revocation, that Silcotub sold the subject merchandise at less than NV.

For these preliminary results, the Department has relied upon Silcotub's sales activity during the 2000–2001, 2001–2002, and 2002–2003 PORs in making its decision regarding Silcotub's revocation request. Although Silcotub had two consecutive years of sales at not less than NV, Silcotub has not received a zero or *de minimis* margin in the instant review. Thus, Silcotub is not eligible for consideration for revocation, and we preliminarily determine not to revoke the order with respect to Silcotub's sales of certain small diameter carbon and alloy seamless standard, Line, and pressure pipe to the United States.

Preliminary Results of the Review

We preliminarily determine that the following dumping margin exists for the period August 1, 2002, through July 31, 2003. This margin is the weighted-average margin of all sales made in both the NME and ME portions of the POR:

Exporter/manufacturer	Weighted-average margin percentage
Silcotub	1.38

Within five days of the date of publication of this notice, in accordance with 19 CFR 351.224, the Department will disclose its calculations. Any interested party may request a hearing within 30 days of the date of publication of this notice. Any hearing, if requested, will be held approximately 37 days after the publication of this notice. Issues raised in hearings will be limited to those raised in the case and rebuttal briefs. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. Parties who submit case briefs or rebuttal briefs in this review are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument, and (3) a table of authorities. Parties are also requested to submit such arguments, and public versions thereof, with an electronic version on a diskette.

Assessment

Upon completion of this administrative review, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated an exporter/importer (or customer)-specific assessment rate for merchandise subject to this review. The Department will issue appropriate assessment instructions to CBP within 15 days of publication of the final results of review. If these preliminary results are adopted in the final results of review, we will direct CBP to assess antidumping duties on the merchandise subject to review pursuant to 19 CFR 351.106(c)(2). This rate will be assessed uniformly on all entries of that particular importer made during the POR.

Cash Deposits

The following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of seamless pipe from Romania entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) The cash-deposit rate for Silcotub will be the rate established in the final results of this review, except if the rate is less than 0.5 percent and, therefore, *de minimis*, the cash deposit will be zero; (2) for previously reviewed or investigated companies not covered in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established in the most recent period for the manufacturer of the merchandise; and, (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be the "all others" rate described in the final results of this review. We invite comments on the value to be used for the "all others" rate.

These cash-deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

The cash-deposit rate we establish in the final results of this review will be applied prospectively to cover future entries. Given that the effective date of the Department's decision to treat Romania as an ME was within the POR, we have applied both NME and ME methodologies to calculate the dumping margins in this review. The Department is considering whether it is more appropriate to base Silcotub's cash-deposit rate on a weighted-average margin calculated using only sales from the seven-month ME portion of the POR or, alternatively, a weighted-average margin calculated using all sales from both the NME and ME portions of the POR. We invite comments on this issue.

This notice also serves as a preliminary reminder to importers of their responsibility to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 30, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E4–2081 Filed 9–3–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–826]

Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Brazil; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to a request from V&M do Brasil, S.A., the Department of

Commerce (the Department) is conducting an administrative review of the antidumping duty order on small diameter circular seamless carbon and alloy steel standard, line and pressure pipe from Brazil (A–351–826). This administrative review covers imports of subject merchandise from V&M do Brasil, S.A. (VMB). The period of review (POR) is August 1, 2002, through July 31, 2003.

We preliminarily determine that sales of subject merchandise by VMB have been made at less than normal value (NV). If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on appropriate entries based on the difference between the constructed export price (CEP) and the NV. Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument: 1) a statement of the issues, 2) a brief summary of the argument, and 3) a table of authorities.

EFFECTIVE DATE: September 7, 2004.

FOR FURTHER INFORMATION CONTACT: Helen Kramer or Patrick Edwards, Antidumping and Countervailing Duty Enforcement, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–0405 or (202) 482–8029, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 3, 1995, the Department published the antidumping duty order on small diameter circular seamless carbon and alloy steel standard, line and pressure pipe from Brazil. *See Notice of Antidumping Duty Order: Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Brazil*, 60 FR 39707 (August 3, 1995). On August 1, 2003, the Department published the opportunity to request administrative review of, *inter alia*, seamless line and pressure pipe from Brazil for the period August 1, 2003, through July 31, 2003. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 68 FR 45218 (August 1, 2003).

In accordance with 19 CFR 351.213(b)(1), on August 12, 2003, VMB requested that we conduct an administrative review of its sales of the subject merchandise. On September 30, 2003, the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review covering the period August 1, 2002, through July 31, 2003. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 68 FR 56262 (September 30, 2003).

On October 30, 2003, the Department issued its antidumping duty questionnaire to VMB. VMB submitted its response to Section A of the questionnaire on December 8, 2003, and the responses to Sections B and C on January 6, 2004. The Department issued a supplemental questionnaire for all three responses on January 16, 2004. On February 9, 2004, the Department received VMB's supplemental response. VMB submitted its response to Section D of the questionnaire on March 3, 2004. On March 22, 2004, the Department issued a successorship questionnaire to VMB, which also covered issues regarding home market and U.S. sales in the information reported in VMB's first supplemental questionnaire response on Sections B and C. On April 6, 2004, the Department issued a third supplemental questionnaire to VMB, pertaining to the model match characteristics the company had reported in its Sections B and C responses. Import Administration's Office of Accounting issued a supplemental questionnaire regarding VMB's Section D response on April 15, 2004. The Department received VMB's response to the model match supplemental questionnaire on April 16, 2004. On April 20, 2004, the Department issued its outline and agenda for the sales verification during the week of April 26, 2004, and also received the sales reconciliation package from VMB on the same date.

Because it was not practicable to complete the preliminary results of this review within the normal time frame, we extended the time limit for this review until August 30, 2004. *See Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Brazil: Extension of Time Limit to Complete Preliminary Results of Antidumping Administrative Review*, 69 FR 22005 (April 23, 2004). Also on April 23, 2004, U.S. Steel Corporation, petitioner, submitted its pre–verification comments to the Department. We verified VMB's submitted data as discussed below.

Verification

As provided in section 782(i) of the Tariff Act (the Act), we verified the sales and cost information provided by VMB for use in our preliminary results using standard verification procedures, including on–site inspection of the manufacturer's facilities and the examination of relevant sales and financial records. We verified VMB's sales responses from April 26, 2004, through April 30, 2004, and cost responses from July 12, 2004, through July 16, 2004, at VMB's Barreiro plant near Belo Horizonte, Brazil. The results of these verifications are found in the sales verification report dated May 26, 2004, and the cost verification report dated August 30, 2004, on file in the Central Records Unit (CRU) of the Department in room B–099 of the main Department of Commerce Building, 14th Street and Constitution Avenue, NW, Washington, DC. See Memorandum to the File from Helen Kramer and Patrick Edwards, Case Analysts, through Abdelali Elouaradia, Program Manager: Verification of Home Market and U.S. Sales Information Submitted by V&M do Brasil, S.A. in the Administrative Review of Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Brazil, dated May 26, 2004, (Sales Verification Report); and Memorandum to Neal Halper, Office of Accounting Director from Ji Young Oh, Accountant, through Theresa Caherty, Program Manager: Verification Report on the Cost of Production and Constructed Value Data Submitted by V&M do Brasil, S.A., dated August 30, 2004, (Cost Verification Report).

Period of Review

The period of review (POR) is August 1, 2002, through July 31, 2003.

Scope of the Review

For purposes of this review, the products covered are seamless pipes produced to the ASTM A–335, ASTM A–106, ASTM A–53 and API 5L specifications and meeting the physical parameters described below, regardless of application. The scope of this review also includes all products used in standard, line, or pressure pipe applications and meeting the physical parameters below, regardless of specification.

For purposes of this review, seamless pipes are seamless carbon and alloy (other than stainless) steel pipes, of circular cross–section, not more than 114.3 mm (4.5 inches) in outside diameter, regardless of wall thickness, manufacturing process (hot–finished or cold–drawn), end finish (plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish. These pipes are commonly known as standard pipe, line pipe or pressure pipe, depending upon the application. They may also be used in structural

applications. Pipes produced in non–standard wall thickness are commonly referred to as tubes.

The seamless pipes subject to this administrative review are currently classifiable under subheadings 7304.10.10.20, 7304.10.50.20, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTS subheadings are provided for convenience and U.S. Customs purposes, the written description of the scope of this review is dispositive.

Successorship

Since the publication of the original antidumping duty order in 1995, there have been eight administrative review periods, during which time only two reviews were requested, including the instant review. The original investigation conducted by the Department involved Mannesmann, S.A. (Mannesmann), a Brazilian subsidiary of Mannesmannröhren–Werke AG of Germany. In 1997, Mannesmannröhren–Werke AG merged with the French steel company Vallourec to create Vallourec & Mannesmann Tubes, headquartered in France. Mannesmann came under the Vallourec Group management structure and was renamed as Vallourec & Mannesmann Tubes V&M do Brasil, S.A., eventually being simplified to V&M do Brasil, S.A in 2000. We have conducted a successorship review during this POR because entries for the new entity will be made under that name during the next POR.

The Department is making this successorship determination in order to apply the appropriate company–specific cash deposit rates. In determining whether VMB is the successor to Mannesmann for purposes of applying the antidumping law, the Department examined a number of factors including, but not limited to, changes in: (1) management, (2) production facilities, (3) suppliers, and (4) customer base. *See, e.g., Brass Sheet and Strip from Canada: Final Results of Antidumping Duty Administrative Review*, 57 FR 20460 (May 13, 1992) (Brass from Canada); *Industrial Phosphoric Acid from Israel: Final Results of Antidumping Duty Changed Circumstances Review*, 59 FR 6944 (February 14, 1994); *Notice of Final Results of Antidumping Duty Changed Circumstances Review: Pressure Sensitive Pipe from Italy*, 69 FR 15279 (March 25, 2004); and *Notice of Final Results of Changed Circumstances Antidumping Duty Administrative Review: Polychloroprene Rubber from Japan*, 67 FR 58 (January 2, 2004). While examining these factors alone will not necessarily provide a conclusive indication of succession, the Department will generally consider one company to have succeeded another if that company's operations are essentially inclusive of the predecessor's operations. *See Brass from Canada.* Thus, if the evidence with respect to the production and sale of the subject merchandise demonstrates that the new company is essentially the same business operation as the former company, the Department will assign the new company the cash deposit rate of its predecessor.

The evidence on the record,[1] including organizational charts, company brochures, customer lists, and financial documentation, demonstrates that with respect to the production and sale of subject merchandise, VMB is the successor to Mannesmann. Specifically, the evidence shows that VMB has the same production facilities, with the exception of facility expansions and improvements, and most of the same customers, suppliers and management, as Mannesmann had. At verification, we confirmed that VMB's facilities, customers, and suppliers had not changed more than is to be expected in the normal course of business. *See* Sales Verification Report. We reviewed VMB's organizational and investment structure before and after the merger of Vallourec and Mannesmann's parent company, Mannesmannröhren–Werke AG. We confirmed that there were only minimal changes made to the organizational and investment structure of VMB, *i.e.*, the Advisory Council became a Board of Directors after the merger, a consequence of a changed management orientation structure. Furthermore, we reviewed documentation at verification to support the name change from Mannesmann to VMB. *See id*, at page 5 and at Exhibit 5. Therefore, we preliminarily find that VMB is the successor to Mannesmann for purposes of this proceeding, and for the application of the antidumping duty law.

Sales Below Cost Investigation

On January 13, 2004, the petitioner, United States Steel Corporation, requested that the Department conduct a sales–below-cost investigation. On January 14, 2004, the Department received notification from VMB that it intended to submit comments on the record regarding the petitioner's cost allegations. The Department informed VMB that comments must be received no later than, January 21, 2004, and VMB submitted its comments on petitioner's cost allegation to the Department accordingly. The petitioner responded on January 26, 2004, and the Department subsequently initiated a sales–below-cost investigation on February 3, 2004.[2] For more information on the Department's analysis of VMB's cost of production and calculation of constructed value, see the section on "COP Analysis" below.

Fair Value Comparisons

To determine whether VMB made sales of seamless standard, line and pressure pipe to the United States at less than fair value, we compared the CEP to the NV, as described in the "Constructed Export Price" and "Normal Value" sections of this notice, below. In accordance with section 777A(d)(2) of the Act, we compared the CEPs of individual U.S. transactions to monthly weighted–average NVs.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by VMB covered by the descriptions in the "Scope of the Review" section of this notice to be foreign like products for the purpose of determining appropriate product comparisons to VMB's U.S. sales of the subject merchandise.

We have relied on the following eight criteria to match U.S. sales of the subject merchandise to sales in Brazil of the foreign like product: product specification, manufacturing process (cold–finished or hot–rolled), grade, wall thickness, outside diameter, schedule, surface finish and end finish.

Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's October 30, 2003, questionnaire.

Constructed Export Price

Section 772(b) of the Act defines CEP as the price at which the subject

[1] *See* Sales Verification Report (May 26, 2004) at pages 3-6, Exhibits 2, 5, 9 and 10 and VMB's Supplemental Questionnaire Response, April 6, 2004.

[2] *See* Memorandum from Helen Kramer and Patrick Edwards, Case Analysts to Richard Weible, Office Director: Petitioner's Allegation of Sales Below the Cost of Production by V&M do Brasil, S.A., dated February 3, 2004.

merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by, or for the account of, the producer or exporter of such merchandise, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under sections 772(c) and (d).

In the instant review, VMB sold subject merchandise through an affiliated company, Vallourec & Mannesmann Tubes Corporation (VM Corp.) of Houston, Texas. VMB reported all of its U.S. sales of subject merchandise as CEP transactions. After reviewing the evidence on the record of this review, we have preliminarily determined that VMB's transactions are classified properly as CEP sales because these sales occurred in the United States and were made through its U.S. affiliate to an unaffiliated buyer. Such a determination is consistent with section 772(b) of the Act and the U.S. Court of Appeals for the Federal Circuit's decision in *AK Steel Corp. et al. v. United States*, 226 F.3d 1361, 1374 (Fed. Cir. 2000) (*AK Steel*). In *AK Steel*, the Court of Appeals examined the definitions of EP and CEP, noting "the plain meaning of the language enacted by Congress in 1994, focuses on where the sale takes place and whether the foreign producer or exporter and the U.S. importer are affiliated, making these two factors dispositive of the choice between the two classifications." *AK Steel* at 1369. The court declared, " the critical differences between EP and CEP sales are whether the sale or transaction takes place inside or outside the United States and whether it is made by an affiliate," and noted the phrase "outside the United States" had been added to the 1994, statutory definition of EP. *AK Steel* at 1368–70. Thus, the classification of a sale as either EP or CEP depends upon where the contract for sale was concluded (*i.e.*, in or outside the United States) and whether the foreign producer or exporter is affiliated with the U.S. importer.

For these CEP sales transactions, we calculated price in conformity with section 772(b) of the Act. We based CEP on the packed, delivered duty paid prices to an unaffiliated purchaser in the United States. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included foreign inland freight, foreign inland insurance, foreign brokerage and handling, international freight, marine insurance, U.S. brokerage and handling and U.S. customs duties. In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including imputed credit expenses and indirect selling expenses. We also made an adjustment for profit in accordance with section 772(d)(3) of the Act.

Normal Value

A. Home Market Viability

To determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared VMB's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(B) of the Act. Because VMB's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined the home market was viable. *See* VMB's Section A Questionnaire Response at Attachment A–1, December 8, 2003.

B. Cost of Production Analysis

Based on a cost allegation submitted by the petitioner pursuant to 19 CFR 351.301(d)(2)(ii), we found reasonable grounds to believe or suspect that VMB made sales of the foreign like product at prices below the COP, as provided by section 773(b)(2)(A)(ii) of the Act. Therefore, pursuant to section 773(b)(1) of the Act, we initiated a COP investigation of sales by VMB. See Memorandum from Helen Kramer and Patrick Edwards, Case Analysts, to Richard O. Weible, Office Director, regarding Petitioner's Allegation of Sales Below the Cost of Production by V&M do Brasil, S.A., February 3, 2004, on file in the CRU.

In accordance with section 773(b)(3) of the Act, we calculated the weighted–average COP for each model based on the sum of VMB's material and fabrication costs for the foreign like product, plus amounts for selling expenses, general and administrative expenses (G&A), interest expenses and packing costs. The Department relied on the COP data reported by VMB, except as noted below:

1. We revised the total cost of manufacturing (TOTCOM) for a particular control number, which had a negative TOTCOM because of a minor aberration in VMB's accounting system. We assigned a TOTCOM of the standard costs for this control number.

2. We revised VMB's reported TOTCOM to exclude normalization costs that were related to non–subject merchandise.

3. We revised the G&A expense ratio to exclude the reversal of bad debt expense.

For further details regarding these adjustments, see the Department's "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results V&M do Brasil, S.A." (COP Memorandum), dated August 30, 2004.

We compared the weighted–average COP figures to the home market sales prices of the foreign like product as required under section 773(b) of the Act, to determine whether these sales had been made at prices below COP. On a product–specific basis, we compared the COP to home market prices net of any applicable billing adjustments, indirect taxes (ICMS, IPI, COFINS and PIS), and any applicable movement charges.

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made in substantial quantities within an extended period of time, and whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of VMB's home market sales of a given model were at prices below the COP, we did not disregard any below–cost sales of that model because we determined that the below–cost sales were not made within an extended period of time in "substantial quantities." Where 20 percent or more of VMB's home market sales of a given model were at prices less than COP, we disregarded the below–cost sales because: (1) they were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Act, and (2) based on our comparison of prices to the weighted–average COPs for the POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

Our cost test for VMB revealed that for home market sales of certain models, less than 20 percent of the sales of those models were at prices below the COP. We therefore retained all such sales in our analysis and used them as the basis for determining NV. Our cost test also indicated that for certain models, more than 20 percent of the home market sales of those models were sold at prices below COP within an extended period of time and were at prices which would not permit the recovery of all costs

within a reasonable period of time. Thus, in accordance with section 773(b)(1) of the Act, we excluded these below–cost sales from our analysis and used the remaining above–cost sales as the basis for determining NV.

C. Price–to-Price Comparisons

We matched all U.S. sales to NV. We calculated NV based on prices to unaffiliated customers. We adjusted gross unit price for billing adjustments, interest revenue and indirect taxes. We made deductions, where appropriate, for foreign inland freight, insurance and warehousing, pursuant to section 773(a)(6)(B) of the Act. In addition, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise, pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411, as well as for differences in circumstances of sale (COS), in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We made COS adjustments for imputed credit expenses, warranty expenses, and commissions. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the export transaction. The NV LOT is that of the starting–price sales in the comparison market. For CEP, it is the level of the constructed sale from the exporter to the importer. We consider only the selling activities reflected in the U.S. price after the deduction of expenses incurred in the United States and CEP profit under section 772(d) of the Act. *See Micron Technology Inc. v. United States*, 243 F.3d 1301, 1314–1315 (Fed. Cir. 2001).

To determine whether NV sales are at a different LOT than CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. We analyze whether different selling activities are performed, and whether any price differences (other than those for which other allowances are made under the Act) are shown to be wholly or partly due to a difference in LOT between the CEP and NV. Under section 773(a)(7)(A) of the Act, we make an upward or downward adjustment to NV for LOT if the difference in LOT involves the performance of different selling activities and is demonstrated to affect price comparability, based on a pattern of consistent price differences between sales at different LOTs in the country in which NV is determined. Finally, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP, but the data available do not provide an appropriate basis to determine a LOT adjustment, we reduce NV by the amount of indirect selling expenses incurred in the foreign comparison market on sales of the foreign like product, but by no more than the amount of the indirect selling expenses incurred for CEP sales. *See* section 773(a)(7)(B) of the Act (the CEP offset provision).

In analyzing differences in selling functions, we determine whether the LOTs identified by the respondent are meaningful. *See Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27371 (May 19, 1997). If the claimed LOTs are the same, we expect that the functions and activities of the seller should be similar. Conversely, if a party claims that LOTs are different for different groups of sales, the functions and activities of the seller should be dissimilar. *See Porcelain–on-Steel Cookware from Mexico: Final Results of Administrative Review*, 65 FR 30068 (May 10, 2000). In the present review, VMB claimed that there was no LOT in the home market comparable to the LOT of the CEP sales, and requested a CEP offset. See VMB's Section A Questionnaire Response at page 15, December 8, 2003.

VMB claimed two LOTs in the home market based on distinct channels of distribution to two categories of customers: distributors and end–users. We examined the reported selling functions and found that VMB's home market selling functions for all customers include sales forecasting, planning and promotion, order processing, general selling functions performed by VMB sales personnel, and provision for warranties. VMB also claimed packing as a selling function performed for all customers. However, did not consider this to be a selling function relevant to LOT. *See* VMB's Section A Questionnaire Response at page A–12 and Exhibit A–11, December 8, 2003. VMB further reported several selling functions unique to each channel of distribution: sales and marketing support and research are functions involved only in sales to distributors, while advertising in trade magazines and providing catalogues and after–sales services are provided solely to end–users. VMB also reported the selling function of inventory maintenance with regard to sales to one end–user customer. A small percentage of VMB sales are transferred to unaffiliated warehouses from which this customer regularly extracts merchandise on a just–in-time (JIT) basis, resulting in an inventory maintenance expense for VMB. *See* VMB's Second Supplemental Response at page 1, April 6, 2004. VMB also claimed the payment of commissions on sales to some end–users as a selling function. However, we make a separate COS adjustment for commissions and do not consider this as a selling function in our LOT analysis.

We weighed the relative importance of each of VMB's reported selling functions in the home market. Advertising, a function provided solely to end–users, accounts for a negligible percentage of the value of total sales during the POR. We found no evidence on the record that VMB provided any pre- or post-sale technical assistance not covered under warranty expenses. At verification, VMB claimed for the first time that it provides substantial further processing services to end–user customers, in effect acting as a service center. However, there is no evidence of this on the record. Based upon the above analysis, we preliminarily conclude that the selling functions for the reported channels of distribution are sufficiently similar to consider them as one LOT in the home market.

Because VMB reported that all of its U.S. sales are CEP sales made through one channel of distribution to its U.S. affiliate, we preliminarily agree with VMB's claim that there is only one LOT in the U.S. market. We examined the claimed selling functions for VMB's CEP sales, *i.e.*, the selling functions performed for the sale to VM Corp., which include sales forecasting, order processing, packing for shipment to the United States, technical assistance, and warranties. *See* VMB's Section A Questionnaire Response at page A–12 and Exhibit A–11, December 8, 2003. As stated above, we did not consider packing as a selling function, and there is no evidence on the record that VMB provided any technical assistance for its U.S. sales. VM Corp. handles the remaining selling functions of sales negotiations, planning, and customer service involved in the CEP sales to the unaffiliated customer in the United States.

We compared VMB's selling functions in the home market with the selling functions for U.S. sales to its affiliate, VM Corp. We preliminarily find that VMB's selling functions for sales to the United States, namely, sales forecasting, order processing, delivery and warranties, are less numerous than VMB's selling functions for its home market sales. Further, in the home market, the chain of distribution is

further from the factory, *e.g.*, many sales are made to distributors and may go through unaffiliated warehouses; in contrast, the CEP LOT is determined by the selling function performed at the point of sale to the affiliated importer and, thus, the CEP LOT is at a less advanced stage of distribution. We therefore examined whether a LOT adjustment or CEP offset may be appropriate. As we have preliminarily determined that VMB sold at only one LOT in the home market, there is no basis for determining a pattern of consistent price differences between LOTs. Moreover, we preliminarily find that there is no home market LOT comparable to the CEP LOT. Further, we do not have record information that would allow us to examine pricing patterns based on VMB's sales of non–subject merchandise, and there are no other respondents or other record information on which such an analysis could be based. Accordingly, because the data available do not provide an appropriate basis for making a LOT adjustment, but the LOT in the home market is at a more advanced stage of distribution than the LOT of the CEP transactions, we preliminarily determine that a CEP offset adjustment is appropriate, in accordance with section 773(a)(7)(B) of the Act.

Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

Preliminary Results of Review

As a result of our review, we preliminarily determine the weighted–average dumping margin for the period August 1, 2002, through July 31, 2003, to be as follows:

Manufacturer / Exporter	Margin (percent)
V&M do Brasil, S.A.	0.90

The Department will disclose calculations performed in connection with these preliminary results of review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed no later than 35 days after the date of publication of this notice. Parties who submit argument in these proceedings are requested to submit with the argument: 1) a statement of the issue, 2) a brief summary of the argument, and (3) a table of authorities. An interested party may request a hearing within 30 days of publication. See section 351.310(c) of the Department's regulations. Any hearing, if requested, will be held 37 days after the date of publication, or the first business day thereafter, unless the Department alters the date. The Department will issue the final results of these preliminary results, including the results of our analysis of the issues raised in any such written comments or at a hearing, within 120 days of publication of these preliminary results.

Assessment Rates

Pursuant to section 351.212(b), the Department calculates an assessment rate for each importer of the subject merchandise. Upon issuance of the final results of this review, if the importer–specific assessment rate calculated in the final results is above *de minimis* (*i.e.*, at or above 0.50 percent), the Department will issue appraisement instructions directly to CBP to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise. For assessment purposes, we calculated an importer–specific assessment rate for the subject merchandise by aggregating the dumping duties due for all U.S. sales to the importer and dividing the amount by the entered value. If these preliminary results are adopted in our final results of review, we will direct CBP to assess the resulting rate against the entered value of the subject merchandise on VMB's affiliated importer's entries during the POR.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed company will be the rate established in the final results of the administrative review (except that no deposit will be required if the rate is zero or *de minimis*); (2) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the most recent period for the manufacturer of the merchandise; and (3) if neither the exporter nor the manufacturer is a firm covered in this review, any previous reviews, or the LTFV investigation, the cash deposit rate will be 124.95 percent, the "all others" rate established in the LTFV investigation. *See Antidumping Duty Order and Amended Final Determination: Certain Small Diameter Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Brazil*, 60 FR 39707 (August 3, 1995).

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 30, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E4–2084 Filed 9–3–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 083104C]

Endangered and Threatened Species; Permit for Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Michael Clarke, City of San Luis Obispo, California, has been issued a permit to take the South Central California Coast Evolutionarily Significant Unit (ESU) of steelhead trout (*Oncorhynchus mykiss*) within the San Luis Obispo Creek watershed for the purpose of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office: NOAA Fisheries, Southwest Region, Protected Resources Division, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802; phone (562) 980–4045; fax (562) 980–4027.

FOR FURTHER INFORMATION CONTACT: Anthony Spina at phone number (562)

980-4045 or e-mail: *anthony.spina@noaa.gov.*

SUPPLEMENTARY INFORMATION: On June 14, 2004, notice was published in the **Federal Register** (69 FR 32992) that Michael Clarke had submitted to NOAA Fisheries an application for a permit to conduct research for scientific purposes on the aforementioned ESU of steelhead trout. The requested permit has been issued under the authority of the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) and NOAA Fisheries' regulations governing listed fish and wildlife permits (50 CFR parts 222–226). The permit authorizes Michael Clarke to take the South Central California Coast ESU of steelhead trout and tissue collection from this species during a 2-year study (2004 and 2005) of the abundance and distribution of juvenile steelhead in the San Luis Obispo Creek watershed. The permit authorizes an annual non-lethal take of 1620 juvenile steelhead, and annual collection and possession of up to 100 juvenile steelhead tissue samples, with the total possession for both years not exceeding 200 tissue samples. The permit will expire on November 1, 2005.

Dated: August 31, 2004.

Phil Williams,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–20236 Filed 9–3–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 083104D]

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Applications for four scientific research permits (1203, 1498, 1502, 1504).

SUMMARY: Notice is hereby given that NMFS has received four scientific research permit applications relating to Pacific salmon and steelhead. All of the proposed research is intended to increase knowledge of species listed under the Endangered Species Act (ESA) and to help guide management and conservation efforts.

DATES: Comments or requests for a public hearing on the applications must be received at the appropriate address or fax number (see ADDRESSES) no later than 5 p.m. Pacific daylight-saving time on October 7, 2004.

ADDRESSES: Written comments on the applications should be sent to Protected Resources Division, NMFS, F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–2737. Comments may also be sent via fax to 503–230–5435 or by e-mail to *resapps.nwr@NOAA.gov.*

FOR FURTHER INFORMATION CONTACT: Garth Griffin, Portland, OR (ph.: 503–231–2005, Fax: 503–230–5435, e-mail: Garth.Griffin@noaa.gov). Permit application instructions are available at *http://www.nwr.noaa.gov.*

SUPPLEMENTARY INFORMATION:

Species Covered in this Notice

The following listed species and evolutionarily significant units (ESUs) are covered in this notice:

Chinook salmon (*Oncorhynchus tshawytscha*): endangered naturally produced and artificially propagated upper Columbia River (UCR); threatened naturally produced and artificially propagated SR spring/summer (spr/sum); threatened naturally produced and artificially propagated Puget Sound (PS).

Chum salmon (*O. keta*): threatened Hood Canal summer-run (HC).

Steelhead (*O. mykiss*): threatened middle Columbia River (MCR); endangered UCR.

Authority

Scientific research permits are issued in accordance with Section 10(a)(1)(A) of the ESA (16 U.S.C. 1531 *et seq.*) and regulations governing listed fish and wildlife permits (50 CFR 222–226). NMFS issues permits/modifications based on findings that such permits and modifications: (1) are applied for in good faith; (2) if granted and exercised, would not operate to the disadvantage of the listed species that are the subject of the permit; and (3) are consistent with the purposes and policies of section 2 of the ESA. The authority to take listed species is subject to conditions set forth in the permits.

Anyone requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA.

Applications Received

Permit 1203 Renewal

The Washington Department of Fish and Wildlife (WDFW) is seeking a 5–year research permit to annually take adult and juvenile UCR spring chinook salmon and steelhead in several tributaries to the upper Columbia River. The purposes of the research are to (1) assess the status (and production levels) of several salmonid stocks in the upper Columbia River and (2) evaluate salmonid habitat in the region to determine what effects various land use activities may have on it particularly hydraulic projects. The research would benefit fish by providing data on the survival of migrating juvenile salmonids, the abundance of adults on spawning grounds, the annual success of spawners, and the relative abundance of salmonids in the available habitat. That data would be used to help guide restoration and recovery activities as well as decrease the potential impact of certain land- and water use actions.

The WDFW intends to use electrofishing equipment, seines, dip nets, and hook-and-line angling to capture the fish. Most of the fish would be measured and released, but some may also be marked or tissue-sampled or both. The WDFW does not intend to kill any of the fish being captured, but a small percentage may die as an unintended result of the research.

Permit 1498

The Port of Bellingham (POB) is requesting a 3–year research permit to annually capture, handle, and release adult and juvenile PS chinook salmon and HC chum salmon. The research would take place in Bellingham Bay, Puget Sound, Washington. The purpose of the research is to determine the extent of fish use in shallow subtidal nearshore habitats. The POB intends to determine the extent to which salmonids use a newly created mitigating site. The research would benefit the fish by determining distribution and providing information that may help POB and others improve fish habitat near boatyards. The POB proposes to capture the fish using a purse seine or bottom trawl seine. The captured fish would be anesthetized, weighed and measured, allowed to recover, and released. The POB does not intend to kill any of the fish being captured, but a small percentage may die as an unintended result of the activities.

Permit 1502

The U.S. Forest Service (USFS) is requesting a 5–year research permit to annually capture, handle, and release juvenile UCR spring chinook and steelhead in the Wenatchee River drainage, Washington. The purposes of the research are to (1) monitor

headwater stream conditions, (2) determine the effects land use activities have on the biological productivity of small, fishless streams in the upper watersheds, (3) relate that information to downstream habitats, and (4) determine whether upper watershed food web productivity is a key determinant of downstream fish community health. The research would benefit the fish by helping managers understand the relationship between upper-watershed food productivity and fish health in downstream areas. It would also serve as a new tool to help managers monitor watershed condition and the effectiveness of various restoration techniques in low-order streams.

The USFS intends to capture the fish using seines, baited minnow traps, and possibly some electrofishing. Most of the sampling would take place at the very upper limit of the fishes' range. Once captured, the fish would be measured, weighed, allowed to recover, and released. A subset of the captured fish would be marked with an elastomer tag, and another subset would undergo gastric lavage. The USFS does not intend to kill any of the fish being taken, but a small percentage may die as an unintended result of the activities.

Permit 1504

The Pacific Shellfish Institute (PSI) is requesting a 3–year research permit to annually capture, handle, and release juvenile PS chinook salmon and HC chum salmon. The research would take place in Puget Sound, Washington. The purpose of the research is to determine fish usage of shellfish aquaculture sites. The PSI intends collect information to assist them in determining the best shellfish production methods while protecting estuarine environments. The research would benefit the fish by providing information intended to reduce the impact shellfish aquaculture has on listed fish. The PSI proposes to capture the fish using pop-up nets. The captured fish would be counted, checked for tags and marks, measured, and released. The PSI does not intend to kill any of the fish being captured, but a small percentage may die as an unintended result of the activities.

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the applications, associated documents, and comments submitted to determine whether the applications meet the requirements of section 10(a) of the ESA and Federal regulations. The final permit decisions will not be made until after the end of the 30–day comment period. NMFS will publish notice of its final action in the **Federal Register**.

Dated: August 31, 2004.

Phil Williams,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–20237 Filed 9–3–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 083104K]

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (MAFMC) Dogfish Monitoring Committee will hold a public meeting.

DATES: The meeting will be held on Friday, September 24, 2004, from 10 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at the Radisson Hotel Manchester, 700 Elm Street, Manchester, NH; telephone: (603) 625–1000.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Room 2115, Dover, DE 19904.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to develop management measures including quotas and trip limits to recommend to the Councils for the 2005–06 specifications setting for spiny dogfish.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the MAFMC's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Debbie Donnangelo at the Mid-Atlantic Council Office (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: September 1, 2004.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E4–2074 Filed 9–3–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 083104H]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Ad Hoc Groundfish Trawl Individual Quota Independent Experts Panel (Experts Panel) will hold a working meeting which is open to the public.

DATES: The Experts Panel working meeting will begin Wednesday, September 22, 2004 at 8:30 a.m. and may go into the evening if necessary to complete business for the day. The meeting will reconvene the next day at 8:30 a.m. and continue until business for the day is completed.

ADDRESSES: The meeting will be held at the Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, West Conference Room, Portland, OR 97220–1384; telephone: 503–820–2280.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Seger, Staff Officer (Economist); telephone: 503–820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the Experts Panel meeting is to review the scoping information document and comments received during the recently completed National Environmental Policy Act public scoping period, in order to determine whether there are significant options and impacts that have not yet been identified which, in the Experts Panel's view, should be considered by the Council.

Although non-emergency issues not contained in the Experts Panel meeting agenda may come before the group for discussion, those issues may not be the subject of formal action during these

meetings. Experts Panel action will be restricted to those issues specifically listed in this notice and to any issues arising after publication of this notice requiring emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the group's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: September 1, 2004.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E4–2073 Filed 9–3–04; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Determination and Non-Designation under the Textile and Apparel Commercial Availability Provisions of the United States-Caribbean Basin Trade Partnership Act

August 31, 2004.

AGENCY: The Committee for the Implementation of Textile Agreements (The Committee).

ACTION: Committee decision not to revoke its prior designation regarding certain coated fusible interlining fabrics.

SUMMARY: The Committee received a petition alleging that certain coated, fusible interlining fabrics, which had been determined by the Committee not to be available in commercial quantities in a timely manner, were in fact available from the domestic industry. The petition requested that the Committee revoke its previous designation making apparel from such fabric eligible for duty-free treatment under the commercial availability provision of the CBTPA. Subsequently, the Committee determined that the subject fabrics, detailed below, both classified under item 5903.90.2500 of the Harmonized Tariff Schedule of the United States (HTSUS), for use in apparel articles, can be supplied by the domestic industry in commercial quantities in a timely manner. However, the Committee has determined that revoking the designation of these fabrics under the commercial availability provision of the CBTPA would have an adverse impact on a significant component of the U.S. textile industry. Therefore, the Committee has decided not to revoke the previous designation regarding these fabrics, and apparel from such fabric will continue to be eligible for duty-free treatment under the commercial availability provision of the CBTPA.

FOR FURTHER INFORMATION CONTACT: Richard P. Stetson, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 211 of the Caribbean Basin Trade Partnership Act (CBTPA), amending Section 213(b)(2)(A)(v)(II) of the Caribbean Basin Economic Recovery Act (CBERA); Presidential Proclamation 7351 of October 2, 2000; Executive Order No. 13191 of January 17, 2001.

Background

The commercial availability provision of the CBTPA provides for duty-free and quota-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary CBTPA country from fabric or yarn that is not formed in the United States or a beneficiary CBTPA country if it has been determined that such yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner and certain procedural requirements have been met. In Presidential Proclamation 7351, the President proclaimed that this treatment would apply to apparel articles from fabrics or yarn designated by the appropriate U.S. government authority in the **Federal Register**.

In Executive Order 13191, the President authorized the Committee to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner.

On April 22, 2003, following a determination that certain coated, fusible interlinings, detailed in the Annex to this notice, could not be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA, the Committee designated apparel from these fabrics as eligible for duty-free treatment under the CBTPA (68 FR 19788).

On April 16, 2004, the Chairman of the Committee received a petition from Hodgson Russ Attorneys, LLP, on behalf of Narroflex, alleging that these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner, and requesting that the Committee revoke its previous designation regarding these fabrics. On April 21, 2004, the Committee requested public comments on the petition (67 FR 244). On May 9, 2004, the Committee and the U.S. Trade Representative (USTR) sought the advice of the Industry Trade Advisory Committee for Textiles and Clothing and the Industry Trade Advisory Committee for Distribution Services regarding the proposed action.

On May 24, 2004, the Committee and USTR offered to hold consultations with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate (Congressional Committees) regarding the proposed action. On May 28, 2004, the U.S. International Trade Commission provided advice regarding the proposed action. Based on the information and advice received and its understanding of the industry, the Committee determined that the fabrics set forth in the petition can be supplied by the domestic industry in commercial quantities in a timely manner.

On June 16, 2004, as required by the CBTPA, the Committee and USTR submitted a report to the Congressional Committees that set forth the action proposed, the reasons for such action, and the advice obtained. A period of 60 calendar days since this report was submitted has expired and during this period the House Ways and Means Committee provided additional advice. On August 4, the Committee received a letter from Chairman William M. Thomas and Ranking Democrat Charles B. Rangel of the Committee on Ways and Means expressing strong concern about revocation, noting the adverse affects such a decision could have on U.S. textile manufacturers and on the economy of the Dominican Republic. The letter also drew the Committee's attention to the Committee on Ways and Means' reports on the United States - Australia Free Trade Agreement Implementation Act and the United States Morocco Free Trade Agreement Implementation Act; in both reports, the Committee on Ways and Means expressed its view that "once an item is designated as being in short supply under trade preference programs, the item is permanently designated as such unless otherwise provided for by the statute implementing the trade preference program."

Based on the advice from a broad spectrum of the domestic industry and the House Ways and Means Committee, the Committee has decided not to revoke its April 22, 2003 designation. Such a revocation would, as a result of the reliance on the Committee's prior designation, have an adverse impact on a significant component of the U.S. textile industry. The Committee will not

revoke its previous designation regarding these fabrics.

Apparel articles from these fabrics remain eligible for quota-free and duty-free treatment under the textile and apparel commercial availability provisions of the CBTPA.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Annex

1. A knitted outer-fusible material with a fold line that is knitted into the fabric. The fabric is a 45mm wide base substrate, knitted in narrow width, synthetic fiber based (made of 49% polyester / 43% elastomeric filament / 8% nylon with a weight of 4.4 oz., a 110/110 stretch, and a dull yarn), stretch elastomeric material with an adhesive (thermoplastic resin) coating. The 45mm width is divided as follows: 34mm solid, followed by a 3mm seam allowing it to fold over, followed by 8mm of solid.
2. A knitted inner-fusible material with an adhesive (thermoplastic resin) coating that is applied after going through a finishing process to remove all shrinkage from the product. The fabric is a 40mm synthetic fiber based stretch elastomeric fusible consisting of 80% nylon type 6/20% elastomeric filament with a weight of 4.4 oz., a 110/110 stretch, and a dull yarn.

[FR Doc. 04–20234 Filed 9–1–04; 2:46 pm]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense; Proposed Collection; Comment Request

AGENCY: Department of Defense, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics) / Office of the Deputy Under Secretary of Defense (Industrial Policy).

ACTION: Notice.

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Deputy Under Secretary of Defense (Industrial Policy) announces the proposed extension of a currently approved collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by November 8, 2004.

ADDRESSES: Interested parties should submit written comments and recommendations on the proposed information collection to: Office of the Deputy Under Secretary of Defense (Industrial Policy); Attn: Mr. Chris Gregor 3330 Defense Pentagon, Room 3E1060, Washington, DC 20301–3330; e-mail comments submitted via the Internet should be addressed to: *Christopher.Gregor@osd.mil.*

FOR FURTHER INFORMATION CONTACT: To request further information on this proposed information collection, or to obtain a copy of the proposal and associated collection instrument, please write to the above address or call Mr. Chris Gregor at (703) 607–4048.

Title, Associated Form, and OMB Number: Department of Defense Application for Priority rating for Production or Construction Equipment, DD Form 691, OMB Number 0704–0055.

Needs and Uses: Executive Order 12919 delegates to DoD authority to require certain contracts and orders relating to approved Defense Programs to be accepted and performed on a preferential basis. This program helps contractors acquire industrial equipment in a timely manner, thereby facilitating development and support of weapons systems and other important Defense Programs.

Affected Public: Business or Other for-Profit; Non-Profit Institutions; Federal Government.

Annual Burden Hours: 610.

Number of Annual Respondents: 610.

Annual Responses to Respondent: 1.

Average Burden Per Response: 1 Hour.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

This information is used so the authority to use a priority rating in ordering a needed item can be granted. This is done to assure timely availability of production or construction equipment to meet current Defense requirements in peacetime and in case of national emergency. Without this information DoD would not be able to asses a contractor's stated requirement to obtain equipment needed for fulfillment of contractual obligations. Submission of this information is voluntary.

Dated: September 1, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–20275 Filed 9–3–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary; Medal of Honor Flag Design Competition

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness, DoD.

ACTION: Notice.

SUMMARY: In accordance with Pub. L. 107–248, Section 8143, this notice is published to collect designs from the public for a Medal of Honor Flag. The Medal of Honor is the Nation's highest military award for valor in action against an enemy force, which can be bestowed upon an individual serving in the Armed Forces of the United States. The President shall provide for presentation of the flag to each person to whom a MOH is awarded after the date of this enactment. The Medal of Honor Flag Design Committee is being established in consonance with the public interest. The committee will review and evaluate all designs submitted in response to the provision set by this law.

DATES: Consideration will be given to all designs submitted on or before October 22, 2004.

ADDRESSES: Designs shall be submitted to: Office of the Under Secretary of Defense (Personnel & Readiness), Attention: ODUSD (MPP) (OEPM), 4000 Defense pentagon, Washington, DC 20301–4000.

FOR FURTHER INFORMATION CONTACT: LTC Tim Donohue, (703) 614–2798.

SUPPLEMENTARY INFORMATION: A panel of eight members made up of representatives from each Service (Army, Navy, Marine Corps, Air Force and Coast Guard), one Office of Secretary Defense staff, one historian, and one representative from the Medal of Honor Society, will review and evaluate all designs submitted in response to the provision set by this law. The panel will made a final recommendation on the Medal of Honor Flag to the Principal Deputy to the Under Secretary of Defense for Personnel and Readiness, once the evaluation process has been completed.

Dated: September 1, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–20276 Filed 9–3–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0102]

Federal Acquisition Regulation; Submission for OMB Review; Prompt Payment

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0102).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension to a currently approved information collection requirement concerning prompt payment. A request for public comments was published at 69 FR 39910 on July 1, 2004. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before October 7, 2004.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat, 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0102, Prompt Payment, in all correspondence.

FOR FURTHER INFORMATION CONTACT Richard C. Loeb, Office of the Deputy Chief Acquisition Officer, GSA (202) 208–3810.

SUPPLEMENTARY INFORMATION:

A. Purpose

Part 32 of the FAR and the clause at FAR 52.232–5, Payments Under Fixed-Price Construction Contracts, require that contractors under fixed-price construction contracts certify, for every progress payment request, that payments to subcontractors/suppliers have been made from previous payments received under the contract and timely payments will be made from the proceeds of the payment covered by the certification, and that this payment request does not include any amount which the contractor intends to withhold from a subcontractor/supplier. Part 32 of the FAR and the clause at 52.232–27, Prompt Payment for Construction Contracts, further require that contractors on construction contracts -

(a) Notify subcontractors/suppliers of any amounts to be withheld and furnish a copy of the notification to the contracting officer;

(b) Pay interest to subcontractors/suppliers if payment is not made by 7 days after receipt of payment from the Government, or within 7 days after correction of previously identified deficiencies;

(c) Pay interest to the Government if amounts are withheld from subcontractors/suppliers after the Government has paid the contractor the amounts subsequently withheld, or if the Government has inadvertently paid the contractor for nonconforming performance; and

(d) Include a payment clause in each subcontract which obligates the contractor to pay the subcontractor for satisfactory performance under its subcontract not later than 7 days after such amounts are paid to the contractor, include an interest penalty clause which obligates the contractor to pay the subcontractor an interest penalty if payments are not made in a timely manner, and include a clause requiring each subcontractor to include these clauses in each of its subcontractors and to require each of its subcontractors to include similar clauses in their subcontracts.

These requirements are imposed by Public Law 100–496, the Prompt Payment Act Amendments of 1988.

Contracting officers will be notified if the contractor withholds amounts from subcontractors/suppliers after the Government has already paid the contractor the amounts withheld. The contracting officer must then charge the contractor interest on the amounts withheld from subcontractors/suppliers. Federal agencies could not comply with the requirements of the law if this information were not collected.

B. Annual Reporting Burden

Respondents: 36,666.
Responses Per Respondent: 11.
Total Responses: 403,326.
Hours Per Response: .11.
Total Burden Hours: 44,366.

C. Annual Recordkeeping Burden

Recordkeepers: 33,333.
Hours Per Recordkeeper: 18.
Total Recordkeeping Burden Hours: 599,994.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VR), 1800 F Street, NW, Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0102, Prompt Payment, in all correspondence.

Dated: August 31, 2004

Ralph J. De Stefano

Acting Director, Contract Policy Division.

[FR Doc. 04–20227 Filed 9–3–04; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0014]

Federal Acquisition Regulation; Information Collection; Statement and Acknowledgment (Standard Form 1413)

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension of an existing OMB clearance (9000–0014).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement

concerning statement and acknowledgment (Standard Form 1413). The clearance currently expires on October 31, 2004.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Comments may be submitted on or before November 8, 2004.

ADDRESSES: Submit comments, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (VR), 1800 F Street, NW., Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0014, Statement and Acknowledgment, Standard Form 1413, in all correspondence.

FOR FURTHER INFORMATION CONTACT
Linda Nelson, Contract Policy Division, GSA (202) 501–1900.

SUPPLEMENTARY INFORMATION:

A. Purpose

Standard Form 1413, Statement and Acknowledgment, is used by all Executive Agencies, including the Department of Defense, to obtain a statement from contractors that the proper clauses have been included in subcontracts. The form includes a signed contractor acknowledgment of the inclusion of those clause in the subcontract.

B. Annual Reporting Burden

Respondents: 31,500.
Responses Per Respondent: 2.
Total Responses: 63,000.
Hours Per Response: .05.
Total Burden Hours: 3,150.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VR), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0014, Statement and Acknowledgment, Standard Form 1413, in all correspondence.

Dated: August 30, 2004
Ralph J. De Stefano
Director, Contract Policy Division.
[FR Doc. 04–20229 Filed 9–3–04; 8:45 am]
BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0077]

Federal Acquisition Regulation; Submission for OMB Review; Quality Assurance Requirements

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0077).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning quality assurance requirements. A request for public comments was published at 69 FR 39909 on July 1, 2004. No comments were received. On review of this second notice, the burden hours associated with this OMB clearance was reduced from ≥39,719≥ to ≥35,746≥. This reduction is based on the Government reviewing 5% of new contract awards for FY 2002 over $100,000 exclusive of acquisition using commercial item acquisition procedures.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before October 7, 2004.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (V), 1800 F Street, NW., Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0077, Quality Assurance Requirements, in all correspondence.

FOR FURTHER INFORMATION CONTACT:
Jeritta Parnell, Contract Policy Division, GSA (202) 501–4082.

SUPPLEMENTARY INFORMATION:

A. Purpose

Supplies and services acquired under Government contracts must conform to the contract's quality and quantity requirements. FAR Part 46 prescribes inspection, acceptance, warranty, and other measures associated with quality requirements. Standard clauses related to inspection require the contractor to provide and maintain an inspection system that is acceptable to the Government; give the Government the right to make inspections and test while work is in process; and require the contractor to keep complete, and make available to the Government, records of its inspection work.

B. Annual Reporting Burden

Respondents: 850.
Responses Per Respondent: 1.
Total Responses: 850.
Hours Per Response: .25.
Total Burden hours: 213.

C. Annual Recordkeeping Burden

Recordkeepers: 52,254.
Hours Per Recordkeeper: .68.
Total Burden Hours: 35,533.
Total Annual Burden: 213 + 35,533 = 35,746.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (V), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0077, Quality Assurance Requirements, in all correspondence.

Dated: August 31, 2004.
Ralph J. De Stefano,
Acting Director, Contract Policy Division.
[FR Doc. 04–20230 Filed 9–3–04; 8:45 am]
BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0138]

Federal Acquisition Regulation; Submission for OMB Review; Contract Financing

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0138).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension to a currently approved information collection requirement concerning contract financing. A request for public comments was published at 69 FR 39911 on July 1, 2004. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before October 7, 2004.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat, 1800 F Street, NW., Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0138, Contract Financing, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Richard C. Loeb, Office of Acquisition Policy, GSA (202) 208–3810.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Federal Acquisition Streamlining Act (FASA) of 1994, Pub. L. 103–355, provided authorities that streamlined the acquisition process and minimize burdensome Government-unique requirements. Sections 2001 and 2051 of FASA substantially changed the statutory authorities for Government financing of contracts. Sections 2001(f) and 2051(e) provide specific authority for Government financing of purchases of commercial items, and sections 2001(b) and 2051(b) substantially revised the authority for Government financing of purchases of non-commercial items.

Sections 2001(f) and 2051(e) provide specific authority for Government financing of purchases of commercial items. These paragraphs authorize the Government to provide contract financing with certain limitations.

Sections 2001(b) and 2051(b) also amended the authority for Government financing of non-commercial purchases by authorizing financing on the basis of certain classes of measures of performance.

To implement these changes, DOD, NASA, and GSA amended the FAR by revising Subparts 32.0, 32.1, and 32.5; by adding new Subparts 32.2 and 32.10; and by adding new clauses to 52.232.

The coverage enables the Government to provide financing to assist in the performance of contracts for commercial items and provide financing for non-commercial items based on contractor performance.

B. Annual Reporting Burden

Respondents: 1,000.

Responses Per Respondent: 5.

Total Responses: 5,000.

Hours Per Response: 2.

Total Burden Hours: 10,000.

The annual reporting burden for performance-based financing is estimated as follows:

Respondents: 500.

Responses Per Respondent: 12.

Total Responses: 6,000.

Hours Per Response: 2.

Total Burden Hours: 12,000.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VR), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0138, Contract Financing, in all correspondence.

Dated: August 31, 2004.

Ralph J. De Stefano,

Acting Director, Contract Policy Division.

[FR Doc. 04–20231 Filed 9–3–04; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense, Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting and Special Technical Area Review (STAR) on High Operating Temperature Near BLIP Infrared Detectors.

DATES: The meeting will be held at 0830, Tuesday, September 28, 2004. The Special Technology Area Review will be held at 0830 on September 29 and 30.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, 241 18th Street, Crystal Square 4, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: The Point of Contact for the meeting is Mr. Eric Carr, AGED Secretariat, 241 18th Street, Crystal Square Four, Suite 500, Arlington, Virginia 22202. The Point of Contact for the STAR is Ms. Elise Rabin, AGED Secretariat, 241 18th Street, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition, Technology and Logistics to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on microwave technology, microelectronics, electro-optics, and electronics materials.

In accordance with section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. 10(d)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that accordingly,

this meeting will be closed to the public.

Dated: September 1, 2004.

L.M. Bynum,

Alternate, OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–20277 Filed 9–3–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; List of Correspondence

AGENCY: Department of Education.

ACTION: List of correspondence from April 1, 2004, through June 30, 2004.

SUMMARY: The Secretary is publishing the following list pursuant to section 607(d) of the Individuals with Disabilities Education Act, as amended (IDEA). Under section 607(d) of the IDEA, the Secretary is required, on a quarterly basis, to publish in the **Federal Register** a list of correspondence from the Department of Education received by individuals during the previous quarter that describes the interpretations of the Department of Education (Department) of the IDEA or the regulations that implement the IDEA.

FOR FURTHER INFORMATION CONTACT: Melisande Lee or JoLeta Reynolds. Telephone: (202) 245–7459 (press 3).

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain a copy of this notice in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact persons listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION: The following list identifies correspondence from the Department issued from April 1, 2004, through June 30, 2004.

Included on the list are those letters that contain interpretations of the requirements of the IDEA and its implementing regulations, as well as letters and other documents that the Department believes will assist the public in understanding the requirements of the law and its regulations. The date and topic addressed by a letter are identified, and summary information is also provided, as appropriate. To protect the privacy interests of the individual or individuals involved, personally identifiable information has been deleted, as appropriate.

Part B—Assistance for Education of All Children With Disabilities

Section 611—Authorization; Allotment; Use of Funds; Authorization of Appropriations

Topic Addressed: Allocation of Grants

- Letter dated April 28, 2004, to Massachusetts Department of Education State Director of Special Education Marcia Mittnacht clarifying that under Part B of the IDEA, States are required to collect child count data on the number of children with disabilities receiving special education and related services on December 1 or, at the State's discretion, the last Friday in October of that school year and that this requirement cannot be waived, so the State could not collect that data on October 1.

Section 612—State Eligibility

Topic Addressed: State Eligibility

- Letter dated June 1, 2004, to Minnesota Department of Education Deputy Commissioner Chas Anderson, clarifying that under Part B of the IDEA, although a State educational agency (SEA) may not establish specific State priorities and require all public agencies within the State to spend a portion of their flow-through funds in accordance with those priorities, the SEA must ensure that public agencies comply with the Part B requirements related to qualified personnel, transition, and the provision of a free appropriate public education, and the SEA must exercise its general supervisory responsibility to ensure compliance with all Part B requirements.

Topic Addressed: State Educational Agency General Supervisory Authority

- Letter dated May 26, 2004, to New Jersey Department of Education Commissioner William J. Librera, clarifying that the SEA is ultimately responsible for ensuring that all Part B requirements, including eligibility, evaluation, and procedural safeguards, are met for eligible children residing within the State, including those children served by a public agency other than a local educational agency.

Topic Addressed: Maintenance of Effort

- Letter dated May 27, 2004, to California Bureau of State Audits Deputy State Auditor Sylvia Hensley, regarding the use of single audits under the Single Audit Act Amendments of 1996 to review a State's compliance with the State-level maintenance of effort and non-supplanting requirements of Part B of the IDEA.

Section 614—Evaluations, Eligibility Determinations, Individualized Education Programs, and Educational Placements

Topic Addressed: Educational Placements

- Letter dated May 26, 2004, to Education Law Center Staff Attorney Shari A. Mamas, clarifying that neither the statute nor the regulations implementing the IDEA provide a general entitlement for parents of children with disabilities, or their professional representatives, to observe their children in any current or proposed educational placement and that the determination of who has access to classrooms may be addressed by State and/or local policy.

Part C—Infants and Toddlers With Disabilities

Section 632—Definitions

Topic Addressed: Early Intervention Services

- Letter dated April 28, 2004, to Illinois Department of Human Services Bureau of Early Intervention Chief Janet D. Gully, explaining regulations and other issues that should be taken into consideration when determining whether services provided after medical or surgical procedures are early intervention services that should be provided under Part C.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister/index.html.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

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(Catalog of Federal Domestic Assistance Number 84.027, Assistance to States for Education of Children with Disabilities)

Dated: August 31, 2004.

Troy R. Justesen,

Acting Deputy Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E4–2075 Filed 9–3–04; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Meeting

AGENCY: United States Election Assistance Commission.

ACTION: Technical Guidelines Development Committee (TGDC). Announcement of TGDC Subcommittee Public Meetings.

DATE AND TIME: The subcommittee meetings will be held September 20th (Transparency and Security), 21st (Core Requirements and Testing) and 22nd (Human Factors and Privacy), 2004 from 9 a.m. until 5 p.m.

ADDRESS AND REGISTRATION: The meetings will be held at the National Institute of Standards and Technology North Campus, 820 West Diamond Avenue, Room 152, Gaithersburg, MD 20899. Due to security requirements advance registration is required at *http://vote.nist.gov.* Registration will be available until 5 p.m., E.S.T., on Wednesday, September 15, 2004. There is no fee.

STATUS: This meeting will be open to the public.

SUMMARY: Public Law 107–252, the Help America Vote Act of 2002 (HAVA), establishes a 15-member Technical Guidelines Development Committee (TGDC) to assist the Executive Director of the Election Assistance Commission (EAC) in the development of voluntary voting system guidelines. HAVA names the Director of the National Institute of Standards and Technology (NIST) to chair the TGDC and requires NIST to provide the TGDC with technical support necessary to carry out its duties. The TGDC met on July 9, 2004, and resolved to establish three five-member subcommittees, each to be chaired by a member. The EAC subsequently approved formation of the subcommittees. The subcommittees are named: (1) Security and Transparency, (2) Human Factors and Privacy, and (3) Core Requirements and Testing.

The duties of the TGDC include the gathering and analysis of data and information related to the security of computers, human factors, voter privacy, and methods to detect and prevent fraud. The purpose of the subcommittee meetings is to provide an opportunity for the election community to offer testimony on technical issues related to the TGDC's voluntary voting standards development process. Each meeting will be chaired by the respective subcommittee chair, and will consist of the presentation of panels of experts by technical subject matter. One hour will be reserved at the conclusion of each day for members of the public to provide up to five minutes of testimony. Members of the public intending to present testimony are requested to indicate this on the advance registration form. Relevant issues include security, transparency, human factors, privacy, core standards requirements and testing of voting systems. Further information on the hearings, including listings of subcommittee members and panel topics, is available at *http://vote.nist.gov.*

FOR FURTHER INFORMATION CONTACT: Allan Eustis, Project Director, Technical Guidelines Development Committee, 100 Bureau Drive/MS 8900, Gaithersburg, MD 20899–8900, phone (301) 975–5099 or e-mail *voting@nist.gov.*

SUPPLEMENTARY INFORMATION: U.S. Election Assistance Commission, Technical Guidelines Development Subcommittee Meetings, September 20, 21, and 22, 2004. 9 a.m.

Agenda (Same for All Three Days)

Call to Order
Pledge of Allegiance
Roll Call
Adoption of Agenda
Introductions
Remarks by Commissioners
Panel One
Panel Two
Panel Three
Panel Four
Public Comment Period
Adjournment

Note: Composition and detailed subject matter for each of the various panels is under development. As information becomes available, these details will be posted at *http://vote.nist.gov.*

Gracia M. Hillman,

Vice-Chair, U.S. Election Assistance Commission.

[FR Doc. 04–20364 Filed 9–2–04; 3:48 pm]

BILLING CODE 6820–YN–M

DEPARTMENT OF ENERGY

Energy Information Administration

Policy Statement; Energy Information Administration Policy for Disseminating Revisions to Petroleum Supply Reporting System Data

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Policy statement: Energy Information Administration policy for disseminating revisions to Petroleum Supply Reporting System data.

SUMMARY: The EIA has formalized its existing policy for disseminating revisions to Petroleum Supply Reporting System (PSRS) data. PSRS information products include data on production, receipts, inputs, movements, and stocks of crude oil, petroleum products, and natural gas liquids in the United States.

DATES: This policy becomes effective on September 7, 2004.

ADDRESS: Requests for information or questions about this policy should be directed to Ms. Stefanie Palumbo of EIA's Petroleum Division. Ms. Palumbo may be contacted by phone (202–586–6866), FAX (202–586–5846), or e-mail (*stefanie.palumbo@eia.doe.gov*). Her mailing address is Petroleum Division, EI–42, Forrestal Building, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Requests for additional information about this policy should be directed to Ms. Palumbo at the address listed above. Information on EIA's petroleum supply program is available on EIA's Internet site at *http://www.eia.doe.gov/oil_gas/petroleum/info_glance/petroleum.html.*

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. No. 93–275, 15 U.S.C. 761 *et seq.*) and the DOE Organization Act (Pub. L. No. 95–91, 42 U.S.C. 7101 *et seq.*) require the EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy

resources to meet near and longer term domestic demands.

The purpose of EIA's Petroleum Supply Reporting System (PSRS) is to collect and disseminate basic and detailed data to meet EIA's mandates and energy data users' needs for credible, reliable, and timely information on U.S. petroleum supply. Adequate understanding of the U.S. petroleum industry requires data on production, receipts, inputs, movements, and stocks of crude oil, petroleum products, and natural gas liquids.

The PSRS is currently comprised of 16 surveys (*i.e.*, six weekly surveys, nine monthly surveys, and one annual survey). The surveys are:

- EIA–800, Weekly Refinery and Fractionator Report,
- EIA–801, Weekly Bulk Terminal Report,
- EIA–802, Weekly Product Pipeline Report,
- EIA–803, Weekly Crude Oil Stocks Report,
- EIA–804, Weekly Imports Report,
- EIA–805, Weekly Terminal Blenders Report,
- EIA–810, Monthly Refinery Report,
- EIA–811, Monthly Bulk Terminal Report,
- EIA–812, Monthly Product Pipeline Report,
- EIA–813, Monthly Crude Oil Report,
- EIA–814, Monthly Imports Report,
- EIA–815, Monthly Terminal Blenders Report,
- EIA–816, Monthly Natural Gas Liquids Report,
- EIA–817, Monthly Tanker and Barge Movement Report,
- EIA–819, Monthly Oxygenate Report, and
- EIA–820 Annual Refinery Report.

The data are disseminated in EIA's petroleum supply information products—the *Weekly Petroleum Status Report (WPSR), This Week in Petroleum (TWIP),* the *Petroleum Supply Monthly (PSM),* and the *Petroleum Supply Annual Volumes 1 and 2 (PSA).* Within five days of the close of the reference week (excluding holiday weeks), weekly PSRS data are disseminated in the *WPSR* and *TWIP* to provide timely, relevant snapshots of the U.S. petroleum industry. Within two months of the close of a reference month, data based on the monthly surveys is disseminated in the *PSM.* About five months after the end of the reference year, final monthly data as well as annual data are published in the *PSA.*

The EIA provides the public and other Federal agencies with opportunities to comment on collections of energy information conducted by EIA. As appropriate, EIA also requests comments on important issues relevant to its dissemination of energy information. Comments received help the EIA when preparing information collections and information products necessary to EIA's mission.

On July 9, 2004, EIA issued a **Federal Register** notice (69 FR 41461) requesting public comments on the policy for disseminating revisions to PSRS data. In that notice, EIA discussed conditions affecting the accuracy of PSRS data, reasons for revisions to PSRS data, and the existing policy for disseminating PSRS data. That policy has been in effect for over ten years.

II. Discussion of Comments

In response to the **Federal Register** notice requesting comments on the PSRS revision policy, EIA received comments from one company. While the company expressed agreement with the policy for disseminating revisions to PSRS data, it did address the situation where a company resubmits revised data to EIA. The company requested that EIA staff should review resubmitted data before conducting follow-up on the originally submitted data. PSRS survey staff have been reminded to consider all information submitted by a company before conducting follow-up.

III. Current Actions

EIA is formally stating its policy for disseminating revisions to PSRS data. This policy has been in effect for over ten years.

With respect to the weekly PSRS data, EIA will only disseminate revised data if the revision is expected to substantively affect understanding of the U.S. petroleum supply. Whether to disseminate a revision to weekly data will be based on EIA's judgment of the revision's expected effect. A revision will be disseminated in the next regularly scheduled release of the weekly products. Weekly PSRS data have been revised on average only once every five years.

The monthly PSRS data reflect EIA's official data on petroleum supply and are considered to be more accurate than the weekly data because they are generally based upon company accounting records instead of company estimates and EIA has more time to edit and correct anomalous data. With respect to the monthly PSRS data, EIA will only disseminate revised data during the year if the revision is expected to substantively affect understanding of the U.S. petroleum supply. Whether to disseminate a revision during the year will be based on EIA's judgment of the revision's expected effect. At the end of year, the monthly data are revised to reflect all resubmitted data received during the year. These official final monthly petroleum supply data are included in the *PSA.* To assist users in understanding the expected effect of revisions to monthly data during the year, EIA publishes a separate monthly table, Impact of Resubmissions on Major Series, in each release of the *PSM.* During the last 10 years, EIA has not published revised monthly data outside this scheduled policy.

The *PSA* reflects EIA's final data on petroleum supply and will only be revised if, in EIA's judgment, a revision is expected to substantively affect understanding of the U.S. petroleum supply. EIA has not revised *PSA* data during the last 10 years.

When EIA disseminates any revised PSRS data, it will alert users to the affected data value(s) that are revised.

EIA reserves the right to revisit or amend this policy. However, EIA shall not establish a new PSRS revision policy without prior notification in the **Federal Register**.

Statutory Authority: Section 52 of the Federal Energy Administration Act (Pub. L. 93–275, 15 U.S.C. 790a).

Issued in Washington, DC, on August 31, 2004.

Guy F. Caruso,

Administrator, Energy Information Administration.

[FR Doc. 04–20225 Filed 9–3–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Dakotas Wind Transmission Study

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of final Study Scope.

SUMMARY: Notice is given to interested parties of the final Study Scope for performing studies associated with the Dakotas Wind Transmission Study (DWTS). The DWTS involves transmission studies on placing of 500 megawatts (MW) of wind power in the Dakotas. Public comments were considered prior to finalizing the Study Scope.

DATES: The Study will begin October 7, 2004.

ADDRESSES: Robert J. Harris, Regional Manager, Upper Great Plains Region, Western Area Power Administration, 2900 4th Avenue North, Billings, MT

59101–1266, e-mail *UGPDakotasWindTS@wapa.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Robert Harris, Regional Manager, Upper Great Plains Region, Western Area Power Administration, Box 35800, Billings, MT 59107–5800, telephone (406) 247–7405; or Mr. C. Sam Miller, Project Manager, Upper Great Plains Region, Western Area Power Administration, P. O. Box 35800, Billings, MT 59107–5800, telephone (406) 247–7466, e-mail *CSmiller@wapa.gov.*

SUPPLEMENTARY INFORMATION: In 2003, Congress passed legislation that included funding for the Western Area Power Administration (Western) to perform "a transmission study on the placement of 500 megawatt[s] [of] wind energy in North Dakota and South Dakota." (Energy and Water Development Appropriations Act, 2004)

The Dakotas lead the nation in wind resources and have the potential to generate more than 100 times their current use of electricity. Wind power in the Dakotas currently totals 110 MW, producing about 2½ percent of the electric energy consumed in the two states.

The Dakotas are already an exporting region with total generation of electricity more than twice consumption. Exports on the region's transmission system are limited by both stability (transient and voltage) and thermal loading.

A number of wind energy transmission studies in the Dakotas have been completed, for both interconnection and delivery. Most notable is Western's "Montana-Dakotas Transmission Scope" completed in 2002, *http://www.wapa.gov/ugp/study.* This study made significant progress in highlighting key wind-related transmission issues. Additional investigations are building on the results of this work. Several new studies are currently underway.

In late February 2004, Western requested public comments to help develop the scope of the DWTS. Announcements were made through news coverage and mailings to interested groups. Comments were requested on study objectives, outcomes, and methods. In response, Western received 70 comments from stakeholders, landowners, individual citizens, elected officials, and utilities. All were carefully considered.

The draft Study Scope was published in the **Federal Register** on May 20, 2004. Western held public meetings on June 15, 2004, at Pierre, SD, and on June 16, 2004, at Bismarck, ND. The meeting objective was to provide an informational discussion and presentation, and accept formal public comments. Formal written comments were accepted through June 21, 2004. A final Study Scope was developed based on the public comments received.

Comments Raised During the Development of this Final Study Scope

Participants in the public process raised numerous comments about the proposed draft Study Scope. Comments and Western's responses are summarized below.

Study Process

Comment: Please elaborate on the study process.

Response: HDR Engineering, Inc. (HDR), an engineering consulting firm, has been contracted to perform the study. HDR will issue a Request for Proposal seeking a firm(s) with the technical expertise required to perform each task of the Study Scope.

Comment: Would wind data and other information from studies currently underway be useful to the DWTS?

Response: The extent to which information/data from existing studies and data bases is useful to the DWTS will be evaluated during the study period.

Comment: Will the study progress be posted on Western's Web site?

Response: Yes, Western will post study status reports at regular intervals at *http://www.wapa.gov/ugp/study/DakotasWind.*

Comment: Is new transmission line construction being considered in this study?

Response: Actual construction activities are not being undertaken in this study. However, transmission system constraints will be identified and solutions will be evaluated.

Comment: What is the total new generation being considered in this study?

Response: As specified in the legislation that established funding for the study, 500 MW of wind energy in North Dakota and South Dakota will be studied.

Comment: Will the final Study Scope examine firm delivery as well as non-firm?

Response: The final Study Scope Tasks 3 and 4 will focus on firm delivery; Task 1 focuses on non-firm delivery.

Comment: Will outage conditions be evaluated at the single contingency level?

Response: Yes. Study Scope Tasks 3 and 4 will be done following conventional North American Electric Reliability Council (NERC) guidelines. Study authors will coordinate closely with current Mid-Continent Area Power Pool (MAPP) models.

Comment: Recommend that Western take a pragmatic and cooperative approach to resolving real project issues in the early stages to make the study a success. Further, recommend Western weigh and evaluate all possible alternatives and be open to new and creative solutions and challenges identified in the study.

Response: Western will use good utility practice in performing the study.

Comment: Recommend Western identify available and practical alternatives for use of the transmission system and develop detailed system and economic data to enhance the transmission system.

Response: The study will provide empirical transmission system data for public use to aid in making business decisions involving wind development in the Dakotas.

Comment: We support Western's proposed concept to further involve the public through technical expert review during the study process.

Response: Western will allow review and comment on key assumptions, methods, models, and preliminary results for the DWTS. Informal meetings will be held so that technical representatives of key stakeholders will be able to participate along with technical representatives of affected utilities, state regulators, the MAPP, Midwest Independent System Operator (MISO), and the National Renewable Energy Laboratory (NREL). Technical representatives would have an engineering background and demonstrate technical expertise in transmission system analysis or wind power development. Participants at the meetings will not be compensated or reimbursed for expenses. Western anticipates up to three meetings in Billings, Montana, during the course of the study. Notice of these meetings will be posted on Western's web page.

Comment: Recommend the Study Scope remain flexible and take into consideration emerging projects.

Response: The final Study Scope will be flexible and consider relevant and applicable emerging projects within the defined wind generation zones.

Comment: Request this process be regarded as a flexible, interactive process where the study can appropriately reflect market and project development advances, especially in consideration of the large potential capital commitments by wind developers to move forward with preliminary siting work.

Response: The Study Scope will be flexible and an interactive process. The study will focus on transmission issues related to placing 500 MW of wind power in North Dakota and South Dakota; consideration of market and policy issues are outside the scope of this study. Consideration of load regions will be considered. This higher level planning study is not intended to replace interconnection and transmission service study requirements for specific projects. Study results should aid wind developers in making business decisions involving wind development in the Dakotas.

Comment: Request specific study locations be included in Task 4.

Response: The DWTS is a higher level planning study and is not intended to replace interconnection and transmission service study requirements for specific projects. Western formulated the Study Scope to balance the many interests and views of the region's stakeholders rather than pursue site-specific studies which benefit a limited few individuals or organizations.

Comment: Request clarification for the selection of the four "most favorable" wind generation zones for evaluation in Task 4.

Response: Selection of the "four most favorable interconnection zones in Task 3" for evaluation in Task 4 will be based upon technical, electrical criteria as outlined by NERC and MAPP guidelines as well as good utility practice.

Comment: Recommend Western regard the selection of "most favorable" not as an endorsement or siting commitment decision, but rather as dynamic modeling examples of potential favorable regions in which wind power could be sited.

Response: Selection of the "most favorable interconnection zones" for evaluation in Task 4 will be based upon technical, electrical criteria as outlined by NERC and MAPP guidelines as well as good utility practice. Western will not be endorsing any siting location in the technical study. The study is a higher level planning study and is not intended to replace interconnection and transmission service study requirements for specific projects.

Comment: We support the three key corridors defined in Study Scope Task 1 and request new transmission lines from north and south of Pierre, SD, also be considered in this task.

Response: The objective of Study Scope Task 1 is to examine the historical and projected usage patterns on the existing transmission lines in the corridors defined in the final Study Scope, compare these patterns to wind generation patterns, and assess the opportunity to deliver non-firm wind energy on these existing transmission lines. New transmission lines will be considered in Tasks 3 and 4.

Comment: Support Study Scope Task 2 as written.

Response: Western has no plans to change the language for Task 2.

Comment: How will the wind generation profiles be developed?

Response: Western will evaluate and develop power production profiles of the Dakotas wind generation using actual historical data and statistically representative wind profiles (several years of historical data normalized to several decades of climate data). Western will coordinate with the NREL to identify the representative wind power production time series and develop the wind models.

Comment: What is the current limit for the North Dakota export boundary?

Response: The simultaneous limit is 1950 MW.

Comment: Will the DWTS affect the currently underutilized generators at Underwood?

Response: As directed by the legislation which provided the DWTS funding, the DWTS is focused on transmission for 500 MW of wind generation and will not examine the contractual utilization of generators at Underwood.

Comment: Will the four generation levels only be studied independently at the seven wind generation zones or will there be a case with simultaneous generation at multiple zones?

Response: Study of simultaneous generation at multiple zones should be possible at the 50 MW level of new wind per zone and will be incorporated into the Study Scope.

Comment: Is there an assurance of development of wind generation in the selected wind generation zones?

Response: No, there is not. The DWTS is a high-level planning study focused solely on technical transmission issues related to new wind power development.

Comment: What is the maximum output per turbine for wind generators?

Response: Wind turbines recently installed in North Dakota and South Dakota are 1.5 MW turbines.

Comment: Will transmission loading curves be available to the public? Will new coal generation and coal-wind integration be considered in this study?

Response: All results of the DWTS will be available to the public at the completion of the study. New coal generation and coal-wind integration are outside the scope of the enabling legislation and outside the scope of this process.

Comment: Has Western explored more diversification with renewable energy in future planning of the transmission system or the impact to economic development in rural areas?

Response: These issues are outside the scope of the DWTS.

Tribal Issues

Comment: What is the government-to-government pathway for participation of tribal governments to get tribal needs known and addressed in the study?

Response: The DWTS is a higher level planning study focused on technical transmission issues related to new wind power development and does not include policy or regulatory issues. Western pursued a public process in developing and formulating a Study Scope which balances the many diverse interests and views of the region's stakeholders, tribes, governments, landowners, wind developers, and others rather than pursue site-specific studies. Specific project needs are addressed with interconnection and transmission service studies that are outside the scope of this higher level study.

Comment: Request direct consultation with tribal governments so as to have input into the study process and for equal consideration given to non-queued proposed tribal projects.

Response: Western supports the Department of Energy's American Indian Policy, which stresses the need for a government-to-government, trust-based relationship. Western intends to continue its practice of consulting with tribal governments so that tribal rights and concerns are considered prior to any action being taken which affects the tribes. Group meetings have been held to discuss the Study Scope and process with stakeholder groups, landowners, tribes, government officials, and interested parties. It is not the intent of this study to penalize or provide an advantage to proposed projects, queued or non-queued.

Comment: Indian Tribes in the Dakotas have been disproportionately impacted by the energy development on the Missouri River and request tribal impacts be reflected in the valuation of overall project impacts.

Response: The DWTS is a technical, higher level planning study focused on transmission issues related to placing 500 MW of wind power in North Dakota and South Dakota; consideration of economic, market, and policy issues is outside the scope of this study.

Comment: Support wind generation zones in the draft Study Scope and request 10 MW projects at five

additional locations be added to the final Study Scope.

Response: The wind generation zones were developed based on public comments, wind resource maps, the Western interconnection queue, tribal projects, and developer projects at large enough values to provide meaningful results. This study is a high-level planning study and is not intended to replace interconnection and transmission service study requirements for specific projects.

Purchase Power Issues

Comment: Will supplemental power purchases based upon drought conditions be addressed in the study?

Response: No, the study will not address supplemental power purchases. This topic is outside the scope of this process.

Comment: Request consideration of a competitive marketplace.

Response: The DWTS is a technical study focused on transmission issues related to placing 500 MW of wind power in North Dakota and South Dakota; consideration of market and policy issues is outside the scope of this study.

Comment: Is the study concerned about expanding of economic development to rural areas and the impact it could have?

Response: Evaluation of rural economic development is outside the scope of the DWTS.

Next Phase of Study Issue

Comment: Support the "Next Phase of Study" concept of a cost-sharing loan and/or grant program for partially funding transmission studies for individual, site-specific wind developers.

Response: After completing this study, Western will evaluate remaining available funds and various options for the next phase of the study; the outcome of this evaluation will be published in the **Federal Register**.

Comment: Recommend putting the most emphasis on Task 3. Request Western study "real projects to get real results." Request a 50–50 cost share/grant to study individual site-specific wind projects.

Response: Western has worked hard to formulate a Study Scope which balances the many interests and views of the region's stakeholders rather than pursue site-specific studies which only benefit a limited few individuals or organizations. If there are funds remaining after the DWTS is completed, Western will evaluate the possibility of developing a cost-share loan and/or grant program for partially funding transmission studies for wind power projects connecting in the Dakotas.

Previous Studies Issues

Comment: Please summarize the results of the previous Western study.

Response: The results of the 2002 Montana-Dakotas Regional Study are available on line at *http://www.wapa.gov/ugp/study/MontDakRgnl/default.htm.*

General Issues

Comment: What is the logic for pursuing 500 MW of wind generation if transmission in the Dakotas is already fully committed?

Response: Study Scope Tasks 1 and 2 will examine the possibility of transmitting additional wind energy on existing transmission lines during periods of the year when the lines are not physically congested or by managing power flow with new technologies. Tasks 3 and 4 will evaluate the possibility of developing new transmission lines.

Comment: Is there a dollar amount associated with this study?

Response: A total of $750,000 was appropriated for this study.

Comment: Would it be appropriate to submit a scope of work now for the possibility of a cost-sharing study if funds are available after completion of Study Scope Tasks 1 through 4?

Response: It would be premature to submit anything for future work until the main study (Tasks 1 through 4) is completed and Western has evaluated what, if any, additional study work should be undertaken.

Comment: Is Western currently evaluating a hybrid conductor that can dissipate heat better?

Response: Yes, two short sections of composite conductor are currently being field tested on Western's transmission system in North Dakota and Arizona.

Summary of Significant Changes From the Draft Study Scope

In Study Scope Task 3 the following language was added: "A case will be run with simultaneous wind generation of at least 50 MW at all seven zones."

Study Scope Objectives

The objectives of the DWTS include: (1) Perform transmission studies on the placement of 500 MW of wind power in North Dakota and South Dakota; (2) recognize and build upon prior related technical study work; (3) coordinate with current related technical study work; (4) solicit and incorporate public comments; and (5) produce meaningful, broadly supported results through a technically rigorous, inclusive study process.

DWTS Work Study Scope

Task 1: Analyze Non-Firm Transmission Potential Relative to New Wind Generation

The existing total transfer capability across the major paths in the Dakotas is already reserved under long-term contracts. However, the scheduled amount of capacity is often less than the total available, leaving unused capacity in many hours of the year. Wind power, as a variable, nondispatchable energy source may be able to fit in the transmission grid in these hours as an energy provider. The possibility of delivering wind energy through long-term, non-firm access, and curtailing wind power deliveries during congested periods, will be studied in this task.

The three key corridors to be studied are: (1) The North Dakota Export Boundary (a monitored regional flow gate comprised of 18 individual transmission lines in North Dakota, South Dakota, and Minnesota), (2) a 230-kilovolt (kV) transmission line, Watertown-Granite Falls, and (3) a group comprised of eight transmission lines running east and southeast from Fort Thompson and west and northwest from Fort Randall (two 230-kV transmission lines, Fort Thompson-Huron; two 230-kV transmission lines, Fort Thompson-Sioux Falls; one 345-kV transmission line, Fort Thompson-Grand Island; two 230-kV transmission lines, Fort Thompson-Fort Randall; and one 115-kV transmission line, Bonesteel-Fort Randall). The evaluation will include hourly, daily, and seasonal analysis for a minimum of 1 year for two cases: historical and projected.

Western will evaluate and compare administratively committed and actual use across each corridor using actual historical data (*e.g.*, this type of comparison can be found in the Western Interconnection Transmission Path Flow Study, February 2003, *http://www.ssg-wi.com/documents/320–2002_Report_final_pdf.pdf*); and projected system data based on a full year system model (*e.g.*, PROMOD IV) of the Integrated System and surrounding control areas.

Western will evaluate and develop power production profiles of the Dakotas wind generation using actual historical data and statistically representative wind profiles (several years of historical data normalized to several decades of climate data). Western will coordinate with the NREL to identify the representative wind power production time series and develop the wind models.

Western will evaluate and compare the time synchronized transmission use

profiles and wind generation profiles over each time frame (hourly, daily, and seasonal analysis for a minimum of 1 year) for both the historical and the projected case.

Western will develop annual flow duration curves for each corridor studied, assess the opportunity to deliver non-firm wind energy, and quantify the annual hours and time period of wind energy curtailment.

Western will run additional modeling cases to bracket key sensitivities including high- and low-hydropower scenarios, demand growth scenarios, and natural gas price scenarios.

Task 2: Assess Potential of Transmission Technologies Relative to New Wind Generation

Normal power flow on the transmission system often results in less than full use of the physical transmission capacity. One or more transmission lines may be loaded up to their thermal limits while the remaining lines are loaded to levels far below their thermal capacity. In the Dakotas, stability issues can limit transfer capacity before thermal limits are reached. Technology-based solutions that can increase the use of existing network transmission lines without jeopardizing reliability are now in a mature development phase and have been applied where economically justified on various utility networks. The Flexible AC Transmission System is a set of controller devices designed to provide dynamic control of power transmission parameters such as transmission line impedance, voltage magnitude, and phase angle. Many of these technologies were identified as possible solutions to transmission constraints in the Montana-Dakotas Transmission Study. This analysis will be developed further in this task.

This task will evaluate the opportunities and costs of increasing the use of existing transmission lines and corridors in the Dakotas while maintaining safe operation of the network. Specific opportunities will be identified and quantified.

Technologies to be studied include: (1) Static var compensation to improve transmission system performance by providing the reactive power required to control dynamic voltage swings, (2) series compensation to improve stability by generating self-regulated reactive power, (3) phase-shifting transformers to improve stability and thermal loading by assisting with the control of power flow, (4) dynamic line ratings to increase transfer capacity by calculating the real time dynamic thermal rating of transmission lines based on real-time monitoring of lines and weather conditions, and (5) reconductoring to increase transfer capacity by replacing transmission line conductors with newer composite materials that can carry more current at the same or higher voltage. This evaluation will include an assessment of impacts on existing tower structures and rights-of-way.

Task 3: Study Interconnection of New Wind Generation

Seven wind generation zones will be evaluated for interconnection. They were developed from public comments, wind resource maps, the Western interconnection queue, tribal projects, and developer projects. The zones are generally located near: Garrison, North Dakota; Wishek/Ellendale/Edgeley, North Dakota; Pickert, North Dakota; Rapid City, South Dakota; Mission, South Dakota; Fort Thompson, South Dakota; Summit/Watertown/Toronto/White/Brookings/Flandreau, South Dakota.

Aggregate interconnection studies to determine the local impacts of new wind generation will be prepared for each site at four wind generation levels of 50, 150, 250, and 500 MW. A case will be run with simultaneous wind generation of at least 50 MW at all seven zones. Impacts to be studied include steady state power flow analysis, constrained interface analysis, short circuit analysis, and dynamic stability analysis.

Task 4: Study the Delivery to Market of New Wind Generation

Aggregate delivery studies will be performed on the four most favorable interconnection zones in Task 3. Several delivery scenarios will be developed for the new wind power based upon markets both inside and outside of the Dakotas.

The incremental transmission delivery capability of each zone will be identified along with the necessary transmission improvements for each level of generation. Both steady state and stability analysis will be completed and losses will be evaluated. Transmission improvement options will be ranked by technical feasibility, right-of-way impact, and cost.

Study Guidelines

All models and system data will be coordinated with and consistent with existing MAPP and MISO models and databases. Current wind turbine models will be used.

Next Phase of Study

If any appropriated funding remains after the DTWS is completed, the following concepts will be explored by Western: (1) Consider a cost-share loan and/or grant program for partially funding transmission studies of highly probable wind power projects connecting in the Dakotas; (2) updating the models developed for Tasks 3 and 4 at regular intervals to incorporate ongoing changes to the transmission system in the Dakotas; and (3) consider other options that support the language of the legislation.

Availability of Information

All studies, comments, letters, memorandums, or other documents that Western initiated or used in developing the Study Scope are available for inspection and copying at the Upper Great Plains Regional Office, located at 2900 4th Avenue North, Billings, Montana. Many of these documents and supporting information are also available on Western's Web site under the "Dakotas Wind Transmission Study" section located at: *http://www.wapa.gov/ugp/study/DakotasWind.*

Regulatory Procedure Requirements

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; so this notice requires no clearance by the Office of Management and Budget.

Small Business Regulatory Enforcement Fairness Act

Western has determined that this rule is exempt from congressional notification requirements under 5 U.S.C. 801 because the action is a rulemaking to approve or prescribe rates or services and involves matters of agency procedure.

Dated: August 26, 2004.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 04–20224 Filed 9–3–04; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2004–0079; FRL–7350–2]

National Advisory Committee for Acute Exposure Guideline Levels (AEGLs) for Hazardous Substances, Proposed AEGL Values; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances (NAC/AEGL Committee) is developing AEGLs on an ongoing basis to provide Federal, State, and local agencies with information on short-term exposures to hazardous chemicals. This notice provides a list of 15 Proposed AEGL chemicals that are available for public review and comment. Comments are welcome on both the AEGL values and the Technical Support Documents placed in the public version of the official docket.

DATES: Comments, identified by docket ID number OPPT–2004–0079, must be received on or before October 7, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Paul S. Tobin, Designated Federal Officer (DFO), Office of Pollution Prevention and Toxics (7406M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8557; e-mail address: *tobin.paul@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the general public to provide an opportunity for review and comment on "Proposed" AEGL values and their supporting scientific rationale. This action may be of particular interest to anyone who may be affected if the AEGL values are adopted by government agencies for emergency planning, prevention, or response programs, such as EPA's Risk Management Program under the Clean Air Act and Amendments Section 112r. It is possible that other Federal Agencies besides EPA, as well as State and local agencies and private organizations, may adopt the AEGL values for their programs. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2004–0079. The official public docket consists of the Technical Support Documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102–Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPPT–2004–0079. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *oppt.ncic@epa.gov*, Attention: Docket ID Number OPPT–2004–0079. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier.* Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2004–0079. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

We invite you to provide your views on the various options we propose, new approaches we have not considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider during the development of the final action. You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA's Office of Prevention, Pesticides and Toxic Substances (OPPTS) provided notice on October 31, 1995 (60 FR 55376) (FRL–4987–3) of the establishment of the NAC/AEGL Committee with the stated charter objective as "the efficient and effective development of AEGLs and the preparation of supplementary qualitative information on the hazardous substances for Federal, State, and Local agencies and organizations in the private sector concerned with chemical emergency planning, prevention, and response." The NAC/AEGL Committee is a discretionary Federal advisory committee formed with the intent to develop AEGLs for chemicals through the combined efforts of stakeholder members from both the public and private sectors in a cost-effective approach that avoids duplication of efforts and provides uniform values, while employing the most scientifically sound methods available.

In this document the NAC/AEGL Committee is publishing proposed AEGL values and the accompanying scientific rationale for their development for 15 hazardous substances. These values represent the eighth set of exposure levels proposed and published by the NAC/AEGL Committee. EPA published "Proposed" AEGLs for 12 chemicals in the **Federal Register** of October 30, 1997 (62 FR 58840–58851) (FRL–5737–3); for 10 chemicals in the **Federal Register** of March 15, 2000 (65 FR 14186–14196) (FRL–6492–4); for 14 chemicals in the **Federal Register** of June 23, 2000 (65 FR 39263–39277) (FRL–6591–2); for 7 chemicals in the **Federal Register** of December 13, 2000 (65 FR 77866–77874) (FRL–6752–5) for 18 chemicals in the **Federal Register** of May 2, 2001 (66 FR 21940–21964) (FRL–6776–3); for

8 chemicals in the **Federal Register** of February 15, 2002 (67 FR 7164–7176) (FRL–6815–8); and for 10 chemicals in the **Federal Register** of July 18, 2003 (68 FR 42710–42726) (FRL–7189–8) in order to provide an opportunity for public review and comment. Background information on the AEGL Program may be found in these earlier **Federal Register** notices, in the EDocket, or on the AEGL web page (*http://www.epa.gov/oppt/aegl*).

Following public review and comment, the NAC/AEGL Committee will reconvene to consider relevant comments, data and information that may have an impact on the Committee's position and will again seek consensus for the establishment of Interim AEGL values. Although the Interim AEGL values will be available to Federal, State and Local agencies and to organizations in the private sector as biological reference values, it is intended to have them reviewed by a subcommittee of the National Academies of Science (NAS). An NAS subcommittee review will serve as a peer review of the Interim AEGLs and the subcommittee will be the final arbiter in the resolution of issues regarding the AEGL values, and the data and basic methodology used for setting AEGLs. Following concurrence, "Final" AEGL values will be published under the auspices of the NAS.

The NAC/AEGL Program is working to ensure that emergency responders and risk managers in this country and abroad are armed with vital information they need to protect the public and themselves from harm in the event of chemical accidents or homeland security emergencies. Because of the serious nature of chemical emergency situations, it is essential that involved personnel have access to the most comprehensive and realistic assessments of human health hazards posed by released chemicals. Underestimation of human health hazard would not be protective, while over estimation might suggest a larger than necessary response zone. The Department of Army and Federal Emergency Management Agency Chemical Stockpile Emergency Preparedness Program (CSEPP), for example, has adopted, as outlined in CSEPP Policy Paper Number 20, AEGLs for sulfur mustard and nerve agents for use in CSEPP community emergency planning and response activities "to prevent or minimize exposures above AEGL-2, above which some temporary but potentially escape-impairing effects could occur." Thus, with the application of the procedures discussed in this unit, the AEGL Program recognizes the importance of considering all available domestic and international test data, both animal and human, to determine threshold levels of harm for a range of exposure scenarios critical to those at the front line in defending public health. The process for development of AEGL values incorporates essential scientific and ethical considerations posed by the possible use of research with human subjects. All human studies that were used as key or supporting evidence to derive AEGL values were judged acceptable for use according to ethical considerations detailed in the Standing Operating Procedures for Developing Acute Exposure Guideline Levels for Hazardous Substances, Subcommittee on Acute Exposure Guideline Levels, National Research Council, National Academy Press, 2001, p. 53. The SOP states "The NAC/AEGL Committee is dependent upon existing clinical, epidemiologic, and case report studies published in the literature for data on humans. Many of these studies do not necessarily follow current guidelines on ethical standards that require effective, documented, informed consent from participating human subjects. Further, recent studies that followed such guidelines may not include that fact in the publication. Although human data may be important in deriving AEGL values that protect the general public, utmost care must be exercised to ensure first of all that such data have been developed in accordance with ethical standards. No data on humans known to be obtained through force, coercion, misrepresentation, or any other such means will be used in the development of AEGLs. The NAC/AEGL Committee will use its best judgment to determine whether the human studies were ethically conducted and whether the human subjects were likely to have provided their informed consent. Additionally, human data from epidemiologic studies and chemical accidents may be used. However, in all instances described here, only human data, documents, and records will be used from sources that are publicly available or if the information is recorded by the investigator in such a manner that subjects cannot be identified directly or indirectly. These restrictions on the use of human data are consistent with the 'Common Rule' published in the Code of Federal Regulations (Protection of Human Subjects, 40 CFR 26, 2000)." Additionally, EPA has recently asked the NAC/AEGL Committee to add an explicit documentation step early in the AEGL development process that the studies proposed for consideration have been consistent with the Program's Standing Operating Procedures (SOPs).

Human data along with animal data, where available, were used to develop AEGL values for 11 out of 15 chemicals listed in this FR notice. Human data were not used as key or supporting studies for 4 chemicals: Chloroform; methyl mercaptan; dimethylformamide; and nitric oxide. Each human study used in the development of AEGL values underwent an ethics review. There was no evidence to suggest that the studies were fundamentally unethical, or significantly deficient relative to ethical standards prevailing when and where they were conducted.

III. List of Chemicals

On behalf of the NAC/AEGL Committee, EPA is providing an opportunity for public comment on the AEGLs for the 15 chemicals identified in the following table. Technical Support Documents and key literature references may be obtained as described in Unit I.B.1.

TABLE 1—PROPOSED AEGL CHEMICAL TABLE

Chemical name	CAS No.
Acetone	67–64–1
Acrolein	107–02–8
Carbon disulfide	75–15–0
Chloroform	67–66–3
1,4-Dioxane	123–91–1
Epichlorohydrin	106–89–8
Methylmercaptan	74–93–1
N,N-Dimethyl formamide	68–12–2
Nitric acid	7697–37–2
Nitric oxide	10102–43–9
Nitrogen dioxide	10102–44–0
Peracetic acid	79–21–0
Sulfur dioxide	7446–09–5
Trichloroethylene	79–01–6
Trimethylchlorosilane	75–77–4

List of Subjects

Environmental protection, Acute Exposure Guideline Levels, AEGL, Chemicals, Hazardous substances.

Dated: August 27, 2004.

Susan B. Hazen,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 04–20223 Filed 9–3–04; 8:45 am]

BILLING CODE 6560–50–S

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting; Sunshine Act

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

Date and Time: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on September 9, 2004, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Jeanette C. Brinkley, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- August 12, 2004 (Open).

B. Reports

- Farm Credit System Building Association Quarterly Report.
- Impact of Hurricane Charley on Florida ACAs.

C. New Business—Other

- Farm Credit of Central Florida, ACA Restructuring.
- AgGeorgia Farm Credit, ACA Restructuring.

Closed Session*

- OSMO Quarterly Report.

*Session Closed-Exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

Dated: September 1, 2004.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 04–20318 Filed 9–2–04; 10:52 am]

BILLING CODE 6705–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 21, 2004.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. Nicholas, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Kevin R. Engel, Le Center, Minnesota, and Rodney G. Engel, Jordan, Minnesota, to acquire voting shares of First State Agency of Le Center, Inc., Le Center, Minnesota, and thereby indirectly acquire voting shares of First State Bank of Le Center, Le Center, Minnesota.

B. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Robert E. Schmidt, Hays, Kansas, and Willard L. Frickey, Las Vegas, Nevada; to acquire voting shares of Hanston Insurance Agency, Inc., and thereby indirectly acquire voting shares of Hanston State Bank, both of Hanston, Kansas.

Board of Governors of the Federal Reserve System, August 31, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–20218 Filed 9–3–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 21, 2004.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. James E. Bishop, Muscle Shoals, Alabama, Jane Kilpatrick Bishop, Muscle Shoals, Alabama, and Kilpatirck–Bishop, Tuscumbia, Alabama; to acquire additional voting shares of First Southern Bancshares, and thereby indirectly acquire voting shares of First Southern Bank, both of Florence, Alabama.

Board of Governors of the Federal Reserve System, September 1, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–20248 Filed 9–3–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the

BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 21, 2004.

A. Federal Reserve Bank of Chicago (Patrick Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Parkway Bancorp, Inc., Harwood Heights, Illinois; to acquire Parkway Mortgage & Financial Center, LLC, Des Moines, Iowa, and thereby engage in residential real estate mortgage lending activities, pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, September 1, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–20247 Filed 9–3–04; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0355]

Scientific Considerations Related to Developing Follow-On Protein Products; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of August 16, 2004 (69 FR 50386). The document announced a public workshop on scientific and technical considerations related to the development of follow-on protein pharmaceutical products. The document was published with an inadvertent error. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Joyce Strong, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

In FR Doc. 04–18627 appearing on page 50386 in the issue of August 16, 2004, the following correction is made: On page 50386, in the third column, under the heading **ADDRESSES**, in the second paragraph add a new second sentence to read: Submit electronic comments to *http://www.fda.gov/dockets/ecomments.*

Dated: August 31, 2004.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 04–20289 Filed 9–1–04; 4:34 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and marine mammals.

DATES: Written data, comments or requests must be received by October 7, 2004.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone (703) 358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Bert M. Deaner, Alto, MI, PRT–091270.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Patrick L. Kirsch, Waconia, MN, PRT–091779.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Michael J. Salnicky, West Hazleton, PA, PRT–092038.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: James F. Kemp, Fredericksburg, TX, PRT–092195.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Marine Mammals

The public is invited to comment on the following applications for a permit to conduct certain activities with marine mammals. The applications were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361, *et seq.*), and the regulations governing marine mammals (50 CFR Part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Jeffrey E. Fuhse, Shohola, PA, PRT–091335.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal use.

Applicant: Joseph A. Tice, Chambersburg, PA, PRT–091775.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort Sea polar bear population in Canada for personal use.

Applicant: Patrick J. Carroll, Bloomfield Hills, MI, PRT–091922.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal use.

Dated: August 20, 2004.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 04–20239 Filed 9–3–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by October 7, 2004.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone (703) 358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Michael Lange, c/o Texas Parks and Wildlife, Austin, TX, PRT–087790.

The applicant requests a permit to export up to 90 seeds of black lace cactus, (*Echinocereus reichenbachii* var. *albertii*) collected from the wild in Texas, to Michael Lange, Plauen, Germany, for the purpose of scientific research.

Applicant: The Colyer Institute, San Diego, CA, PRT–088724.

The applicant requests a permit to export the carcass of one captive-born Calamian deer (*Axis calaminensis*), to the National Museums of Scotland for the purpose of scientific research.

Applicant: Joseph T. Glover, Sawyerville, AL, PRT–092306.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Klinton J. Graf, Pearsall, TX, PRT–092357.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Hawthorn Corporation, Grayslake, IL, PRT–087701, 087703, 088950, 088952, 088953, 088954, 088955, 088956, 088957, 088958, 088959, and 088960.

The applicant requests permits to export live captive born tigers (*Panthera tigris*) to worldwide locations for the purpose of enhancement of the species through conservation education. The permit numbers and animals are: Lizzie, 087701; Massey, 087703; China, 088950; Vanita, 088952; Amba, 088953; Vishnu, 088954; Diego, 088955; Frieda, 088956; Shaman, 088957; Shiua, 088958; Natari, 088959; Darsha, 088960. This notification covers activities to be conducted by the applicant over a three-year period and the import of any potential progeny born while overseas.

Applicant: Feld Entertainment, dba Ringling Bros & Barnum & Bailey, Graylake, IL, PRT–063771 and 088351.

The applicant requests permits to export two live captive-born Asian elephants (*Elephas maximus*) to worldwide locations for the purpose of enhancement of the species through conservation education. The permit numbers and animals are: "Doc" or "Fish," 063771; and "Gunther" 088351. This notification covers activities to be conducted by the applicant over a three-year period.

Endangered Marine Mammals and Marine Mammals

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered marine mammals and/or marine mammals. The application(s) was/were submitted to satisfy requirements of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*) and/or the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361, *et seq.*), and the regulations governing endangered species (50 CFR Part 17) and/or marine mammals (50 CFR Part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: New College of Florida, Sarasota, FL, PRT–837923.

The applicant requests a permit amendment to conduct studies measuring auditory brainstem responses for an additional 10 captive-held Florida manatees (*Trichechus manatus*) for the purpose of scientific research. This notification covers activities to be conducted by the applicant through August, 2007.

Concurrent with the publication of this notice in the **Federal Register**, the Division of Management Authority is forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Applicant: Guy P. Ferraro, Union Beach, NJ, PRT–092340.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Viscount Melville Sound polar bear population in Canada for personal use.

Dated: August 27, 2004.

Lisa J. Lierheimer,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 04–20241 Filed 9–3–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits for marine mammals.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone (703) 358–2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the dates below, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361, *et seq.*), the Fish and Wildlife Service issued the requested permit(s) subject to certain conditions set forth therein.

Marine Mammals

Permit number	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
087037	Thomas J. Hoffman, Sr	69 FR 30714; May 28, 2004	July 29, 2004.
087955	John D. Pearson	69 FR 33931; June 17, 2004	August 16, 2004.
088778	Berry L. Bridges	69 FR 36095; June 28, 2004	August 16, 2004.
088999	Armen M. Avedissian	69 FR 36095; June 28, 2004	August 16, 2004.

Dated: August 20, 2004.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 04–20240 Filed 9–3–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits for marine mammals.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone (703) 358–2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the dates below, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361, *et seq.*), the Fish and Wildlife Service issued the requested permits subject to certain conditions set forth therein.

Marine Mammals

Permit no.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
085777	Jay Y. Nieuwenhuis	69 FR 27947; May 17, 2004	August 18, 2004.
087181	Raymond K. Yu	69 FR 31834; June 7, 2004	August 18, 2004.
088309	Steven S. Bruggeman	69 FR 36096; June 28, 2004	August 18, 2004.

Dated: August 27, 2004.

Lisa J. Lierheimer,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 04–20243 Filed 9–3–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–910–04–0777XX]

Notice of Public Meeting: Sierra Front/ Northwestern Great Basin Resource Advisory Council, Northeastern Great Basin Resource Advisory Council, and Mojave-Southern Great Basin Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Combined Resource Advisory Council meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), the Department of the Interior, Bureau of Land Management (BLM) Resource Advisory Council meetings will be held as indicated below.

DATES: The three councils will meet on Thursday, October 21 from 8 a.m. to 5 p.m. and Friday, October 22, from 8 a.m. to 3 p.m., in the Grande D Conference Room, Riviera Hotel, 2901 Las Vegas Blvd., Las Vegas, Nevada 89109.

FOR FURTHER INFORMATION CONTACT: Jo Simpson, Chief, Office of Communications, BLM Nevada State Office, 1340 Financial Blvd., Reno, Nevada, telephone (775) 861–6586; or Debra Kolkman at telephone (775) 289–1946.

SUPPLEMENTARY INFORMATION: The 15-member Councils advise the Secretary of the Interior, through the Bureau of Land Management (BLM), on a variety of planning and management issues associated with public land management in Nevada. Agenda topics include a presentation and discussion of accomplishments during 2004 and the outlook for 2005 for the BLM in Nevada; opening remarks and closeout reports of the three Resource Advisory Councils (RACs); breakout meetings of each group category; breakout meetings of the three RACs; setting of schedules for meetings of the individual RACs for the coming year, and other issues members of the Councils may raise. A detailed agenda will be available at *http://www.nv.blm.gov* after October 12, 2004. All meetings are open to the public. The public may present written comments to the three RAC groups or the individual RACs. The public comment period for the Council meeting will be at 3 p.m. on Thursday, October 21. Individuals who plan to attend and need further information about the meeting or need special assistance such as sign language

interpretation or other reasonable accommodations, should contact Debra Kolkman at the BLM Nevada State Office, 1340 Financial Blvd., Reno, Nevada, telephone (775) 289–1946.

Dated: August 30, 2004.

Robert V. Abbey,

State Director, Nevada.

[FR Doc. 04–20202 Filed 9–3–04; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: Permanent Provisions of the Brady Handgun Violence Prevention Act.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** volume 69, number 125, on page 39499 on June 30, 2004, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until October 7, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Permanent Provisions of the Brady Handgun Violence Prevention Act.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. *Other:* Individuals or households. The information collection is submitted to implement the permanent provisions of the Brady Law. These provisions provide for the establishment of a National Instant Criminal Background Check System (NICS) that requires a firearms licensee must contact NICS before transferring any firearm to unlicensed individuals. Section 478.150 provides for an alternative to NICS in certain geographical locations.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 106,000 respondents will comply with the provisions of the Brady Handgun Violence Prevention Act.

(6) *An estimate of the total burden (in hours) associated with the collection:* Since 1994, no licensee has qualified for an exception from the provisions of Brady based on geographical location. Therefore, the total annual burden associated with this information collection is 1 hour.

FOR FURTHER INFORMATION CONTACT: Brenda E. Dyer, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: August 23, 2004.

Brenda E. Dyer,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 04–20284 Filed 9–3–04; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: Federal Firearms License (FFL) renewal application.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** volume 69, number 124, on page 38918 on June 29, 2004, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until October 7, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Federal Firearms License (FFL) Renewal Application.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF F 8 (5310.11). Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. *Other:* Individuals or households. *Abstract:* The form is filed by the licensee desiring to renew a Federal firearms license. It is used to identify the applicant, locate the business/collection premises, identify the type of business/collection activity, and determine the eligibility of the applicant.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 35,000 respondents, who will complete the form within approximately 25 minutes.

(6) An estimate of the total burden (in hours) associated with the collection: There are an estimated 14,700 total burden hours associated with this collection.

FOR FURTHER INFORMATION CONTACT: Brenda E. Dyer, Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: August 25, 2004.

Brenda E. Dyer,

Clearance Officer, United States Department of Justice.

[FR Doc. 04–20285 Filed 9–3–04; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: User—Limited Permit (Explosives).

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtained comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** volume 69, number 124, on page 38919 on June 29, 2004, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until October 7, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* User-Limited Permit (Explosives).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF F 5400.6. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. *Other:* None. *Abstract:* The User-Limited Permit is useful to the person making a one-time purchase from out-of-state. It is used one time only and is nonrenewable. The explosives distributor makes entries on the form and return the form to the permittee to prevent reuse of the permit.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 1,092 respondents, who will complete and retain the form within approximately 12 minutes.

(6) An estimate of the total burden (in hours) associated with the collection: There are an estimated 218 total burden hours associated with this collection.

FOR FURTHER INFORMATION CONTACT: Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: August 24, 2004.

Brenda E. Dyer,

Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 04–20286 Filed 9–2–04; 8:45 am]

BILLING CODE 4410–FY–M

DEPARTMENT OF JUSTICE

Bureau of Alcohol Tobacco Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: Identification of Explosive Materials.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** volume 69, number 85, on page 24194 on May 3, 2004, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until October 7, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Identification of Explosive Materials.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. *Other:* None. The regulations of 27 CFR 555.109 require that manufacturers of explosive materials place marks of identification on the materials manufactured. Marking of explosives enables law enforcement entities to more effectively trace explosives from the manufacturer through the distribution chain to the end purchaser. This process is used as a tool in criminal enforcement activities.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 1,563 respondents will respond to this information collection. There is no estimated time for a respondent to respond because the manufacturers are required to place markings on explosives, the burden hours are considered usual and customary. 5 CFR 1320.3(b)(2) states, there is no burden when the collection of information is usual and customary.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual total burden hour associated with this collection is 1 hour.

FOR FURTHER INFORMATION CONTACT: Brenda E. Dyer, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: August 23, 2004.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 04–20287 Filed 9–3–04; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: Open letter to states with permits that appear to qualify as alternatives to NICS checks.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** volume 69, number 34, on page 7982 on February 20, 2004, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until October 7, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to

respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Open Letter to States With Permits That Appear to Qualify as Alternatives to NICS Checks.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State, local, or tribal government. *Other:* None. The purpose of this information collection is to ensure that only State permits that meet the statutory requirements contained in the Gun Control Act qualify as alternatives to a National Instant Criminal Background Check System (NICS) check.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 21 respondents, who will take 1 hour to prepare a written response to ATF.

(6) *An estimate of the total burden (in hours) associated with the collection:* There is an estimated 21 total burden hours associated with this collection.

FOR FURTHER INFORMATION CONTACT: Brenda E. Dyer, Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: August 23, 2004.

Brenda E. Dyer,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 04–20288 Filed 9–3–04; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Southwest Research Institute: Validation of a Methodology for Assessing Defect Tolerance of Welded Reeled Risers

Notice is hereby given that, on August 12, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Southwest Research Institute ("SwRI®") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to this project and (2) the nature and objectives of a venture titled "Validation of a Methodology for Assessing Defect Tolerance of Welded Reeled Risers." The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are Chevron Texaco Exploration and and Production Technology Company, San Ramon, CA; ExxonMobil Development Company, Houston, TX; and Shell International Exploration & Production, Inc., Houston, TX. The nature and objectives of the venture are to validate the EPFM predictions of ductile tearing and tear-fatigue of pre-existing surface defects, as calculated by FlawPro ™, using full-scale pipes subjected to strain excursions representative of pipe reeling and straightening and to assess the influence of reeling strains on fatigue in sweet and sour environments, as well as validate FlawPro ™'s predictions of fatigue performance in these service environments. SwRI originally developed FlawPro ™ computer software for analysis of reeled pipe in October 2002.

Membership in this research project group remains open, and the participants intend to file additional written notification disclosing all changes in membership or planned activities.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–20249 Filed 9–3–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)].

This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Worker Information—Terms and Conditions of Employment (WH–516 English and WH–516 Espanol). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before November 8, 2004.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, E-mail *bell.hazel@dol.gov*. Please use only one method of transmission for comments (mail, fax, or E-mail).

SUPPLEMENTARY INFORMATION:

I. Background

Various sections of the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), 29 U.S.C. 1801 *et seq.*; require each farm labor contractor, agricultural employer and agricultural association to disclose employment terms and conditions in writing to: (a) Migrant agricultural workers at the time of recruitment (MSPA section 201(a)); (b) seasonal agricultural workers, upon request, at the time of hire (MSPA section 301(a)(1)); and (c) seasonal agricultural workers employed through a day-haul operation at the place of recruitment (MSPA section 301(a)(2)). MSPA sections 201(b) and 301(b) also

require that each such respondent provide each migrant worker, upon request, a written statement of terms and conditions of employment. In addition, MSPA sections 201(g) and 301(f) require providing such information in English or, as necessary and reasonable, in a language common to the workers and that the U.S. Department of Labor (DOL) make forms available to provide such information. DOL prints and makes optional Form WH–516, Worker Information—Terms of Conditions of Employment, available for this purpose. MSPA sections 201(a)(8) and 301(a)(1)(H) require disclosure of certain information regarding State workers' compensation insurance to each migrant or seasonal agricultural worker (*i.e.*, whether State workers' compensation is provided and if so, the name of the State workers' compensation insurance carrier, the name of each person of the policyholder of such insurance, the name and the telephone number of each person who must be notified of an injury or death and the time period within which this notice must be given). Respondents may also meet this disclosure requirement, by providing the worker with a photocopy of any notice regarding workers' compensation insurance required by law of the state in which such worker is employed. The terms and conditions required to be disclosed to workers are set forth in sections 500.75(a) and (b) and 500.75(a), (b) and (c) of Regulations, 29 CFR part 500, Migrant and Seasonal Agricultural Worker Protection. Regulations 500.75(a) and 500.76(a) allow respondents to complete and disclose to workers the terms and conditions of employment using the DOL-developed optional form WH–516 to satisfy these requirements. Optional Form WH–516 may be used by the respondent to disclose employment terms and conditions in writing to migrant and seasonal agricultural workers. This information collection is currently approved for use through February 28, 2005.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks the approval for the extension of this information collection in order to carry out its responsibility to ensure that farm labor contractors, agricultural employers and agricultural associations have disclosed to their migrant and seasonal agricultural workers the terms and conditions of employment as required by MSPA and its regulations.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Worker Information—Terms and Conditions of Employment.

OMB Number: 1215–0187.

Agency Number: WH–516 English and WH–516 Espanol.

Affected Public: Farms, Individuals or households, Business or other for-profit.

Total Respondents: 129,000.

Total Responses: 1,594,800.

Average Time per Response: 32 minutes.

Estimated Total Burden Hours: 68,800.

Frequency: On Occasion.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $43,060.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: September 1, 2004.

Bruce Bohanon,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 04–20216 Filed 9–3–04; 8:45 am]

BILLING CODE 4510–27–P

MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY FOUNDATION

Notice of Federal Advisory Committee Meeting

AGENCY: U.S. Institute for Environmental Conflict Resolution, Morris K. Udall Foundation.

ACTION: Notice of meeting.

Authority: 5 U.S.C. Appendix; 20 U.S.C. 5601–5609.

SUMMARY: The National Environmental Conflict Resolution (ECR) Advisory Committee, of the U.S. Institute for Environmental Conflict Resolution, will meet by teleconference on Wednesday, September 15, 2004. The call will occur from 2 p.m. to approximately 4 p.m. eastern daylight time. Members of the public may participate in the call by dialing 1–800–930–9002 and entering a passcode: 8072291.

During this teleconference, the Committee will discuss: the Committee's first draft report, next steps for the Committee and planning for future Committee work. The report of approved recommendations by the Committee can be viewed at *http://www.ecr.gov/necrac/reports.htm.*

Members of the public may make oral comments on the teleconference or submit written comments. In general, each individual or group making an oral presentation will be limited to five minutes, and total oral comment time will be limited to one-half hour at the end of the call.

Written comments may be submitted by mail or by e-mail to *gargus@ecr.gov.* Written comments received in the U.S. Institute office far enough in advance of a meeting may be provided to the Committee prior to the meeting; comments received too near the meeting date to allow for distribution will normally be provided to the Committee at the meeting. Comments submitted during or after the meeting will be accepted but may not be provided to the Committee until after that meeting.

FOR FURTHER INFORMATION CONTACT: Any member of the public who desires further information concerning the teleconference or wishes to submit oral or written comments should contact Tina Gargus, Special Projects Coordinator, U.S. Institute for Environmental Conflict Resolution, 130 S. Scott Avenue, Tucson, AZ 85701; phone (520) 670–5299, fax (520) 670–5530, or e-mail at *gargus@ecr.gov.* Requests to make oral comments must be in writing (or by e-mail) to Ms.

Gargus and be received no later than 5 p.m. mountain standard time on Friday, September 10, 2004. Copies of the draft meeting agenda may be obtained from Ms. Gargus at the address, phone and e-mail address listed above.

Dated: August 31, 2004.

Christopher L. Helms,

Executive Director, Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation, and Federal Register Liaison Officer.

[FR Doc. 04–20203 Filed 9–3–04; 8:45 am]

BILLING CODE 6820–FN–P

NATIONAL AERONAUTICS AND SPACE ADMINSTRATION

[Notice (04–107)]

Return to Flight Task Group; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the Return to Flight Task Group (RTFTG).

DATES: Thursday, September 16, 2004, from 8 a.m. until 11 a.m. central daylight time.

ADDRESSES: Webster Civic Center, 311 Pennsylvania, Webster, TX 77598.

FOR FURTHER INFORMATION CONTACT: Mr. Vincent D. Watkins at (281) 792–7523.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the meeting room. Attendees will be requested to sign a register.

The agenda for the meeting is as follows:

- Welcome remarks from Co-Chair
- Discussion of status of NASA's implementation of selected Columbia Accident Investigation Board return to flight recommendations
- Action item summary from Executive Secretary
- Closing remarks from Co-Chair

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

R. Andrew Falcon,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 04–20226 Filed 9–3–04; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of Permit Modification Received under the Antarctic Conservation Act of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of requests to modify permits issued to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of a requested permit modification.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by October 7, 2004. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292–7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Description of Permit Modification Requested

The Foundation issued a permit (2001–011– to Dr. Wayne Z. Trivelpiece on September 28, 2000. The issued permit allows the applicant to capture and release up to 1,000 Adelie, Gentoo, Chinstrap penguins, and other various seabirds for banding, weighing, blood sampling, stomach pumping and attaching radio Txs, PTTs and TDRs. The collection of samples and data will be used to study the behavioral ecology and population biology of the penguins and the interaction among these species and their principal seabird predators.

The applicant requests a modification to his permit to allow access to Lion's Rump, Antarctic Specially Protected Area #151, for the purpose of surveying and checking the bands of the breeding and non-breeding skua population, as well as the Adelie, Gentoo and Chinstrap penguin population.

Location

ASPA 151—Lions Rump, King George Island.

Dates

October 1, 2004 to April 1, 2005.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 04–20238 Filed 9–3–04; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–008–ESP and ASLBP No. 04–822–02–ESP]

Atomic Safety and Licensing Board; In the Matter of Dominion Nuclear North Anna, LLC (Early Site Permit for North Anna ESP Site); Notice of Hearing (Application for Early Site Permit)

August 31, 2004.

Before Administrative Judges: Alex S. Karlin, Chairman, Dr. Richard F. Cole, Dr. Thomas S. Elleman.

This proceeding concerns the September 25, 2003 application of Dominion Nuclear North Anna, LLC (Dominion) for a 10 CFR Part 52 early site permit (ESP). The ESP application seeks approval of the site of the existing North Anna nuclear power facility in Louisa County, Virginia, for the possible construction of two or more new nuclear reactors. In response to a November 25, 2003 notice of hearing and opportunity to petition for leave to intervene, 68 FR 67489 (Dec. 2, 2003), on January 2, 2004, the Blue Ridge Environmental Defense League (BREDL), the Nuclear Information and Resource Service (NIRS), and Public Citizen (PC) (collectively the North Anna Petitioners) filed a request for hearing and petition to intervene contesting the Dominion ESP application. On March 2, 2004 the Commission referred the petition to the Atomic Safety and Licensing Board Panel to conduct any subsequent adjudication. CLI–04–08, 59 NRC 113, 118–19 (2004). On March 22, 2004, a three-member Atomic Safety and Licensing Board was established to adjudicate this ESP proceeding. 69 FR 15910 (Mar. 26, 2004).

On June 21–22, 2004, the Board conducted a two-day initial prehearing conference at the NRC's Rockville, Maryland headquarters facility during which it heard oral presentations regarding the standing of the ESP petitioners and the admissibility of their nine proffered contentions. Thereafter, in an August 6, 2004 issuance the Board noted that the petitioners have established the requisite standing to intervene in this proceeding and ruled that they have submitted two admissible contentions concerning the Dominion ESP application so that they can be admitted as parties to this proceeding. *Dominion Nuclear North Anna, LLC* (Early Site Permit for North Anna Clinton ESP Site), LBP–04–18, 60 NRC—(Aug. 6, 2004). On that same date the Board issued a Notice of Reconstitution establishing new members of this Board. 69 FR 49916 (Aug. 12, 2004).

In light of the foregoing, please take notice that a hearing will be conducted in this contested proceeding. This hearing will be governed by the hearing procedures set forth in 10 CFR Part 2, Subparts C and L, 10 CFR 2.300–2.390, 2.1200–2.1213. Further, in accordance with the December 2003 notice regarding the Dominion ESP application, 68 FR at 69489 and 10 CFR 52.21, the Licensing Board will:

(1) Consider whether the issuance of an ESP will be inimical to the common defense and security or to the health and safety of the public (Safety Issue 1);

(2) Determine whether, taking into consideration the site criteria contained in 10 CFR Part 100, a reactor, or reactors, having characteristics that fall within the parameters for the site, can be constructed and operated without undue risk to the health and safety of the public (Safety Issue 2); and

(3) Consider whether, in accordance with the requirements of subpart A of 10 CFR Part 51, the ESP should be issued as proposed.

Additionally, in accord with the December 2003 notice, the Board will:

(1) Determine whether the requirements of sections 102(2)(A), (C), and (E) of the National Environmental Policy Act of 1969 and 10 CFR Part 51, Subpart A, have been complied with in the proceeding;

(2) Independently consider the final balance among conflicting factors contained in the record of proceeding with a view to determining the appropriate action to be taken; and

(3) Determine, after considering reasonable alternatives, whether a license should be issued, denied, or appropriately conditioned to protect environmental values.

During the course of the proceeding, the Board may conduct an oral argument, as provided in 10 CFR 2.331, may hold additional prehearing conferences pursuant to 10 CFR 2.329, and may conduct evidentiary hearings in accordance with 10 CFR 2.327–2.328, 2.1206–2.1208. The public is invited to attend any oral argument, prehearing conference, or evidentiary hearing. Notices of those sessions will be published in the **Federal Register** and/or made available to the public at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and through the NRC Web site, *www.nrc.gov*.

Additionally, as provided in 10 CFR 2.315(a), any person not a party to the proceeding may submit a written limited appearance statement. Limited appearance statements, which are placed in the docket for the hearing, provide members of the public with an opportunity to make the Board and/or the participants aware of their concerns about matters at issue in the proceeding. A written limited appearance statement can be submitted at any time and should be sent to the Office of the Secretary using one of the methods prescribed below:

Mail to: Office of the Secretary, Rulemakings and Adjudications Staff, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Fax to: (301) 415–1101 (verification (301) 415–1966).

E-mail to: hearingdocket@nrc.gov.

In addition, a copy of the limited appearance statement should be sent to the Licensing Board Chairman using the same method at the address below:

Mail to: Administrative Judge Alex S. Karlin, Atomic Safety and Licensing Board Panel, Mail Stop T–3F23, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Fax to: (301) 415–5599 (verification (301) 415–7550)

E-mail to: gpb@nrc.gov

At a later date, the Board may entertain oral limited appearance statements at a location or locations in the vicinity of the proposed Dominion site. Notice of any oral limited appearance sessions will be published in the **Federal Register** and/or made available to the public at the NRC PDR and on the NRC Web site, *www.nrc.gov*.

Documents relating to this proceeding are available for public inspection at the Commission's PDR or electronically from the publicly available records component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *www.nrc.gov/reading-rm/adams.html* (the Public Electronic Reading Room). Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

It is so ordered.

Dated: August 31, 2004, in Rockville, Maryland.

For the Atomic Safety and Licensing Board.*

Alex S. Karlin,

Chairman, Administrative Judge.

[FR Doc. 04–20197 Filed 9–3–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–007–ESP and ASLBP No. 04–821–01–ESP]

Atomic Safety and Licensing Board; In the Matter of Exelon Generation Company, LLC (Early Site Permit for Clinton ESP Site); Notice of Hearing (Application for Early Site Permit)

August 31, 2004.

Before Administrative Judges:
Dr. Paul B. Abramson, Chairman
Dr. Anthony J. Baratta
Dr. David L. Hetrick

This proceeding concerns the September 25, 2003 application of Exelon Generation Company, LLC (EGC) for a 10 CFR Part 52 early site permit (ESP). The ESP application seeks approval of the site of the existing Clinton nuclear power facility in DeWitt County, Illinois, for the possible construction of one or more new nuclear reactors. In response to a December 8, 2003 notice of hearing and opportunity to petition for leave to intervene regarding the EGC ESP application (68 FR 69,426 (Dec. 12, 2003)), on January 12, 2004, the Environmental Law and Policy Center, the Nuclear Energy Information Service, the Blue Ridge Environmental Defense League, the Nuclear Information and Resource Service, and Public Citizen (collectively Clinton Intervenors) filed a request for hearing and petition to intervene contesting the EGC ESP application. Their petition was referred by the Commission to the Atomic Safety and Licensing Board Panel to conduct any subsequent adjudication. (*See* CLI–04–08, 59 NRC 113, 118–19 (2004).) On March 22, 2004, a three-member Atomic Safety and Licensing Board was

*Copies of this notice of hearing were sent this date by Internet e-mail transmission to counsel for (1) applicant DNNA; (2) the North Anna Intervenors; and (3) the NRC staff.

established to adjudicate this ESP proceeding. (*See* 69 FR 15,910 (Mar. 26, 2004).)

On June 21–22, 2004, the Board conducted a two-day initial prehearing conference at the NRC's Rockville, Maryland headquarters facility during which it heard oral presentations regarding the standing of the ESP petitioners and the admissibility of their six proffered contentions. Thereafter, in an August 6, 2004 issuance the Board noted that the petitioners have established the requisite standing to intervene in this proceeding and ruled that they have submitted one admissible contention concerning the EGC ESP application so that they can be admitted as parties to this proceeding. (*Exelon Generation Company, LLC* (Early Site Permit for Clinton ESP Site), LBP–04–17, 60 NRC__(Aug. 6, 2004).)

1. *Hearing(s) Will Be Conducted.* In light of the foregoing, please take notice that a hearing will be conducted in this contested proceeding. This hearing will be governed by the hearing procedures set forth in 10 CFR Part 2, Subparts C and L (10 CFR 2.300–.390, 2.1200–.1213).

2. *Matters To Be Considered.* In its August 6, 2004 Order (referred to above), the Board set forth the specific admitted contention which will be litigated in this contested hearing. In addition, as was indicated in the December 2003 notice regarding the EGC ESP application (68 FR at 69,426) and the applicable regulations in 10 CFR 52.21, the Licensing Board is to: (a) *Consider* whether issuance of an ESP will be inimical to the common defense and security or to the health and safety of the public (Safety Issue 1); (b) *determine* whether, taking into consideration the site criteria contained in 10 CFR Part 100, a reactor or reactors having characteristics that fall within the parameters for the site, can be constructed and operated without undue risk to the public health and safety (Safety Issue 2); and (c) *consider* whether in accordance with the requirements of 10 CFR Part 51, Subpart A, the ESP should be issued as proposed. Additionally, in accord with the December 2003 notice, the Board is to: (d) *Determine* whether the requirements of sections 102(2)(A), (C), and (E) of the National Environmental Policy Act of 1969 and 10 CFR Part 51, Subpart A, have been complied with in the proceeding; (e) independently *consider* the final balance among conflicting factors contained in the record of proceeding with a view to determining the appropriate action to be taken; and (f) *determine*, after considering reasonable alternatives, whether a license should be issued, denied, or appropriately conditioned to protect environmental values.

3. *Hearing Procedures; Public Attendance.* During the course of the proceeding, the Board may conduct an oral argument, as provided in 10 CFR 2.331, may hold additional prehearing conferences pursuant to 10 CFR 2.329, and may conduct evidentiary hearings in accordance with 10 CFR 2.327–.328, 2.1206–.1208. The public is invited to attend any oral argument, prehearing conference, or evidentiary hearing. Notices of those sessions will be published in the **Federal Register** and/or made available to the public at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and through the NRC Web site, *www.nrc.gov*.

4. *Limited Appearances.* As provided in 10 CFR 2.315(a), any person not a party to the proceeding may submit a written limited appearance statement. Limited appearance statements, which are placed in the docket for the hearing, provide members of the public with an opportunity to make the Board and/or the participants aware of their concerns about matters at issue in the proceeding. A written limited appearance statement can be submitted at any time and should be sent to the Office of the Secretary using one of the methods prescribed below:

Mail to: Office of the Secretary, Rulemakings and Adjudications Staff, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Fax to: (301) 415–1101 (verification (301) 415–1966).

E-mail to: hearingdocket@nrc.gov.

In addition, a copy of the limited appearance statement should be sent to the Licensing Board Chairman using the same method at the address below:

Mail to: Administrative Judge Paul B. Abramson, Atomic Safety and Licensing Board Panel, Mail Stop T–3F23, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Fax to: (301) 415–5599 (verification (301) 415–7550).

E-mail to: gpb@nrc.gov.

At a later date, the Board may entertain oral limited appearance statements at a location or locations in the vicinity of the proposed EGC ESP. Notice of any oral limited appearance sessions will be published in the **Federal Register** and/or made available to the public at the NRC PDR and on the NRC Web site, *www.nrc.gov*.

5. *Document Availability.* Documents relating to this proceeding are available for public inspection at the Commission's PDR or electronically from the publicly available records component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *www.nrc.gov/reading-rm/adams.html* (the Public Electronic Reading Room). Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

It is so ordered.

Dated: August 31, 2004 in Rockville, Maryland.

For the Atomic Safety and Licensing Board.*

Paul B. Abramson,

Administrative Judge.

[FR Doc. 04–20198 Filed 9–3–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–344, License No. NPF–1; Docket No. 72–017, License No. SNM–2509]

Portland General Electric Company; Notice of Consideration of Approval of Portland General Electric Company's Application for Consent for Indirect Transfer of Facility Licenses for the Trojan Nuclear Plant and Trojan Independent Spent Fuel Storage Installation and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission or NRC) is considering the issuance of an order under 10 CFR 50.80 and 72.50 approving the indirect transfer of Portland General Electric's (PGE's) licenses NPF–1 [for the Trojan Nuclear Plant (TNP)] and SNM–2509 [for the Trojan Independent Spent Fuel Storage Installation (ISFSI)] from Enron Corp. (Enron) to Oregon Electric Utility Company, LLC (OEUC).

In a letter dated June 14, 2004, Portland General Electric Company (PGE) requested NRC consent to the acquisition of all the issued and outstanding common shares of PGE stock by OEUC. PGE owns 67.5 percent interest in the TNP and the Trojan ISFSI. According to the application, on November 18, 2003, PGE's corporate parent Enron and OEUC entered into a definitive agreement (the Transaction) under which OEUC will acquire all of the issued, and outstanding, common shares of PGE stock and become the sole

* Copies of this notice of hearing were sent this date by Internet e-mail transmission to counsel for (1) applicant EGC; (2) the Clinton Intervenors; and (3) the NRC staff.

owner of PGE. OEUC is an Oregon limited liability company formed for the sole purpose of holding the common stock ownership of PGE. PGE would continue to be the NRC licensee of TNP and the Trojan ISFSI. In its application, PGE states that no physical changes will be made to the TNP or the Trojan ISFSI as a result of the proposed indirect transfer of the TNP and Trojan ISFSI licenses. Further, PGE states that the proposed transfers will not involve any changes to the current TNP or Trojan ISFSI licensing bases.

Pursuant to 10 CFR 50.80 and 72.50, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the indirect transfer of a license, if the Commission determines that the underlying transaction that will effectuate the indirect transfer will not affect the qualifications of the holder of the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

Any person whose interest may be affected by the Commission's action on the application may request a hearing by November 15, 2004, and, if not the applicant, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, "Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications," of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.309, and should address the considerations contained in 10 CFR 2.309(d) and (f). Untimely requests and petitions may be denied, as provided in 10 CFR 2.309(c), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.309(c)(1)(I)–(viii).

Requests for a hearing and petitions for leave to intervene should be served upon Samuel Behrends IV, LeBouef, Lamb, Greene & McRae, 1875 Connecticut Ave., NW., Suite 1200, Washington, DC 20009 (*sbehrend@llgm.com*) and Jay E. Silberg, Shaw Pittman LLP, 2300 N Street, NW., Washington, DC 20037 (*JaySilberg@shawpittman.com*); the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 (e-mail address for filings regarding license transfer cases only: *ogclt@nrc.gov*; and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.305.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by October 14, 2004, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated June 14, 2004, available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html* (ADAMS Accession Nos. ML041700579, ML041700583, and ML041750439). Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated in Rockville, Maryland this 31st day of August, 2004.

For The Nuclear Regulatory Commission.

Andrew Persinko,

Acting Deputy Director, Decommissioning Directorate, Division of Waste Management and Environmental Protection, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 04–20193 Filed 9–3–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–009–ESP and ASLBP No. 04–823–03–ESP]

Atomic Safety and Licensing Board; In the Matter of System Energy Resources, Inc. (Early Site Permit for Grand Gulf ESP Site); Notice of Hearing (Application for Early Site Permit)

August 31, 2004.

Before Administrative Judges: G. Paul Bollwerk, III, Chairman; Dr. Paul B. Abramson; Dr. Anthony J. Baratta.

This proceeding concerns the October 16, 2003 application of System Energy Resources, Inc., (SERI) for a 10 CFR part 52 early site permit (ESP). The ESP application seeks approval of the site of the existing Grand Gulf nuclear power station in Claiborne County, Mississippi, for the possible construction of one or more new nuclear reactors. In response to a January 7, 2004 notice of hearing and opportunity to petition for leave to intervene regarding the SERI ESP application (69 FR 2636 (Jan. 16, 2004)), on February 12, 2004, the National Association for the Advancement of Colored People (Claiborne County, Mississippi Branch), Nuclear Information and Resource Service, Public Citizen, and the Mississippi Chapter of the Sierra Club (collectively Grand Gulf Petitioners) filed a request for hearing and petition to intervene contesting the SERI ESP application, which they supplemented on February 17, 2004. Subsequently, the petitions were referred by the Commission to the Atomic Safety and Licensing Board Panel to conduct any subsequent adjudication. (*See* CLI–04–08, 59 NRC 113, 118–19 (2004).) On March 22, 2004, a three-member Atomic Safety and Licensing Board was established to adjudicate this ESP proceeding. (*See* 69 FR 15,911 (Mar. 26, 2004).)

On June 21–22, 2004, the Board conducted a two-day initial prehearing conference at the NRC's Rockville, Maryland headquarters facility during which it heard oral presentations regarding the standing of the ESP petitioners and the admissibility of their seven proffered contentions. Thereafter,

in an August 6, 2004 issuance the Board noted that although the petitioners had established the requisite standing to intervene in this proceeding, they had failed to submit at least one admissible contention concerning the SERI ESP application so that none of them can be admitted as a party to this proceeding. (*System Energy Resources, Inc.* (Early Site Permit for Grand Gulf ESP Site), LBP–04–19, 60 NRC—(Aug. 6, 2004).)

Although this proceeding is now uncontested, as was indicated in the January 2004 notice regarding the SERI ESP application, 69 Fed. Reg. at 2636, and in accordance with the agency's regulations in 10 CFR part 52, the Licensing Board is to determine if (1) The application and the record of the proceeding contain sufficient information and the review of the application by the NRC staff has been adequate to support a negative finding on the issue of whether issuance of an ESP will be inimical to the common defense and security or to the health and safety of the public (Safety Issue 1); (2) an affirmative finding can be made on the issue of whether, taking into consideration the site criteria contained in 10 CFR part 100, a reactor or reactors having characteristics that fall within the parameters for the site, can be constructed and operated without undue risk to the public health and safety (Safety Issue 2); and (3) the review conducted by the Commission pursuant to the National Environmental Policy Act of 1969 (NEPA) has been adequate. Additionally, in accord with the January 2004 notice, the Board is to (1) Determine whether the requirements of NEPA sections 102(2)(A), (C), and (E) and 10 CFR part 51, subpart A, have been complied with in the proceeding; (2) independently consider the final balance among conflicting factors contained in the record of proceeding with a view to determining the appropriate action to be taken; and (3) determine, after considering reasonable alternatives, whether a license should be issued, denied, or appropriately conditioned to protect environmental values.

This proceeding will be conducted in accordance with the procedures in 10 CFR part 2, Subparts C and L (10 CFR 2.300–.390, 2.1200–.1213). During the course of the proceeding, the Board may conduct an oral argument, as provided in 10 CFR 2.331, may hold additional prehearing conferences pursuant to 10 CFR 2.329, and may conduct evidentiary hearings in accordance with 10 CFR 2.327–.328, 2.1207. The public is invited to attend any oral argument, prehearing conference, or evidentiary hearing. Notices of those sessions will be published in the **Federal Register** and/or made available to the public at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and through the NRC Web site, *http://www.nrc.gov*.

Additionally, as provided in 10 CFR 2.315(a), any person not a party to the proceeding may submit a written limited appearance statement. Limited appearance statements, which are placed in the docket for the hearing, provide members of the public with an opportunity to make the Board and/or the participants aware of their concerns about matters at issue in the proceeding. A written limited appearance statement can be submitted at any time and should be sent to the Office of the Secretary using one of the methods prescribed below:

Mail to: Office of the Secretary, Rulemakings and Adjudications Staff, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Fax to: (301) 415–1101 (verification (301) 415–1966).

E-mail to: hearingdocket@nrc.gov.

In addition, a copy of the limited appearance statement should be sent to the Licensing Board Chairman using the same method at the address below:

Mail to: Administrative Judge G. Paul Bollwerk, III, Atomic Safety and Licensing Board Panel, Mail Stop T–3F23, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Fax to: (301) 415–5599 (verification (301) 415–7550). *e-mail to: gpb@nrc.gov.*

At a later date, the Board may entertain oral limited appearance statements at a location or locations in the vicinity of the proposed Grand Gulf ESP site. Notice of any oral limited appearance sessions will be published in the **Federal Register** and/or made available to the public at the NRC PDR and on the NRC Web site, *http://www.nrc.gov*.

Documents relating to this proceeding are available for public inspection at the Commission's PDR or electronically from the publicly available records component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *www.nrc.gov/reading-rm/adams.html* (the Public Electronic Reading Room). Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

It is so Ordered.

Dated: August 31, 2004, in Rockville, Maryland.

For the Atomic Safety and Licensing Board.*

G. Paul Bollwerk, III,

Administrative Judge.

[FR Doc. 04–20199 Filed 9–3–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–368]

Entergy Operations, Inc., Arkansas Nuclear One, Unit 2; Notice of Availability of the Draft Supplement 19 to the Generic Environmental Impact Statement and Public Meeting for the License Renewal of Arkansas Nuclear One, Unit 2

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has published a draft plant-specific supplement to the Generic Environmental Impact Statement (GEIS), NUREG–1437, regarding the renewal of operating license NPF–6 for an additional 20 years of operation at Arkansas Nuclear One, Unit 2 (ANO–2). ANO–2 is located in Pope County, Arkansas, approximately 6 miles west-northwest of Russellville, Arkansas. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources.

The draft Supplement to the GEIS is available for public inspection in the NRC Public Document Room (PDR) located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, 20852 or from the Publicly Available Records (PARS) component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* (the Public Electronic Reading Room). Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* In addition, the Ross Pendergraft Library at Arkansas Tech University, 305 West Q Street, Russellville, Arkansas, 72801, has agreed to make the draft plant-specific supplement to the GEIS available for public inspection.

Any interested party may submit comments on the draft supplement to the GEIS for consideration by the NRC

* Copies of this notice of hearing were sent this date by Internet e-mail transmission to counsel for (1) Applicant SERI; (2) the Grand Gulf Petitioners; and (3) the NRC staff.

staff. To be certain of consideration, comments on the draft supplement to the GEIS and the proposed action must be received by November 24, 2004. Comments received after the due date will be considered if it is practical to do so, but the NRC staff is able to assure consideration only for comments received on or before this date. Written comments on the draft supplement to the GEIS should be sent to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mailstop T–6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Comments may be hand-delivered to the NRC at 11545 Rockville Pike, Room T–6D59, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays. Electronic comments may be submitted to the NRC by e-mail at *ANOEIS@nrc.gov*. All comments received by the Commission, including those made by Federal, State, and local agencies, Native American Tribes, or other interested persons, will be made available electronically at the Commission's PDR in Rockville, Maryland, and from the PARS component of ADAMS.

The NRC staff will hold a public meeting to present an overview of the draft plant-specific supplement to the GEIS and to accept public comments on the document. The public meeting will be held on October 21, 2004, at the Holiday Inn, 2407 N. Arkansas Avenue, Russellville, Arkansas. The meeting will commence at 7 p.m. and will continue until 10 p.m. It will be transcribed and will include: (1) A presentation of the contents of the draft plant-specific supplement to the GEIS, and (2) the opportunity for interested government agencies, organizations, and individuals to provide comments on the draft report. Additionally, the NRC staff will host informal discussions one hour before the start of the meeting at the same location. No comments on the draft supplement to the GEIS will be accepted during the informal discussions. To be considered, comments must be provided either at the transcribed public meeting or in writing, as discussed below. Persons may pre-register to attend or present oral comments at the meeting by contacting Mr. Thomas Kenyon be telephone at 1–800–368–5642, extension 1120, or by e-mail at *ANOEIS@nrc.gov* no later than October 15, 2004. Members of the public may also register within 15 minutes of the start of the session to provide oral comments. Individual oral comments may be limited by the time available, depending on the number of persons who register. If special equipment or accommodations are needed to attend or present information at the public meeting, the need should be brought to Mr. Kenyon's attention no later than October 15, 2004, to provide the NRC staff adequate notice to determine whether the request can be accommodated.

FOR FURTHER INFORMATION CONTACT: Thomas Kenyon, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Mr. Kenyon may be contacted at the aforementioned telephone number or e-mail address.

Dated in Rockville, Maryland, this 30th day of August, 2004.

For the Nuclear Regulatory Commission.

Samson S. Lee,

Acting Program Director, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 04–20192 Filed 9–3–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–390]

Tennessee Valley Authority; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Tennessee Valley Authority (the licensee) to withdraw its April 7, 2004, application for proposed amendment to Facility Operating License No. NPF–90 for the Watts Bar Nuclear Plant (WBN), Unit 1, located in Rhea County, Tennessee.

The proposed amendment would have revised the WBN Unit 1, Technical Specification (TS) 3.7.9, "Ultimate Heat Sink (UHS)" Surveillance Requirement and TS 5.7 "Procedures, Programs and Manuals."

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on April 27, 2004 (69 FR 22884). However, by electronic mail dated August 9, 2004, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated April 7, 2004, and the licensee's electronic mail dated August 9, 2004, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O–1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 27th day of August 2004.

For the Nuclear Regulatory Commission.

Manny M. Comar,

Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04–20194 Filed 9–3–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

State of Utah: Discontinuance of Certain Commission Regulatory Authority Within the State; Notice of Amendment to Agreement Between the Nuclear Regulatory Commission and the State of Utah

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of amendment to the agreement between NRC and the state of Utah.

SUMMARY: This notice is announcing that on August 10, 2004, Dr. Nils J. Diaz, Chairman of the U.S. Nuclear Regulatory Commission (NRC) and on August 16, 2004, Governor Olene S. Walker of the State of Utah signed an amendment to the Agreement between the NRC and the State of Utah as authorized by section 274b of the Atomic Energy Act of 1954, as amended (Act). The amendment to the Agreement became effective on August 16, 2004. The amendment to the Agreement provides for the Commission to discontinue its regulatory authority and for Utah to assume regulatory authority over the possession and use of byproduct material as defined in section 11e.(2) of the Act. Under the amendment to the Agreement, a person in Utah possessing this material is exempt from certain Commission regulations. The exemptions have been

previously published in the **Federal Register** (FR) and are codified in the Commission's regulations at 10 CFR part 150. The amendment to the Agreement (Appendix A) is published as required by section 274e of the Act.

FOR FURTHER INFORMATION CONTACT: Dennis M. Sollenberger, Office of State and Tribal Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone (301) 415–2819 or e-mail *DMS4@nrc.gov.*

SUPPLEMENTARY INFORMATION: The draft amendment to the Agreement was published in the **Federal Register** (FR) for comment once a week for four consecutive weeks (*see e.g.*, 69 FR 7026; February 12, 2004) as required by the Act. The public comment period ended on March 15, 2004. The Commission received one comment letter (ML040780577 and ML040780567) which was addressed by the NRC staff. The commenter raised questions on Utah's adoption of the NRC policy allowing alternate feed materials to be processed at uranium mills, on proceeding with the amendment to the Agreement while the Commission is considering the proposed alternative groundwater standards, and on several other issues dealing with specific NRC past actions and what approach Utah should take in the future in implementing the amendment to the Agreement. The NRC staff analyzed these comments and prepared responses to them (ML042240493). The NRC staff determined that the comments received do not affect the NRC staff's assessment which finds the Utah 11e.(2) byproduct material program adequate to protect public health, safety, and environment, and compatible with the NRC's program. Thus, Utah meets NRC's criteria for an Agreement for 11e.(2) byproduct material. The proposed Utah amendment to the Agreement is consistent with Commission policy and thus, meets the criteria for an 11e.(2) byproduct material amendment to the Agreement with the Commission.

After considering the request for an amendment to the Agreement by the Governor of Utah, the supporting documentation submitted with the request for the amendment to the Agreement, and the interactions with the staff of the Utah Division of Radiation Control, Department of Environmental Quality, the NRC staff completed an assessment of the Utah 11e.(2) byproduct material program. A copy of the NRC staff assessment (ML041940185) was made available in the NRC's PDR and electronically on NRC's Web site. Based on the documents submitted by Utah, the NRC staff's analysis of comments, and the NRC staff's assessment, the Commission determined on August 4, 2004, that the proposed Utah 11e.(2) byproduct material program is adequate to protect public health, safety, and the environment, and that it is compatible with the NRC's program (ML042170320).

Documents referred to in this notice and other publicly available documents created or received at the NRC after November 1, 1999, are also available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 31st day of August, 2004.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

Appendix A—Amendment to Agreement Between the United States Nuclear Regulatory Commission and the State of Utah for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended

Whereas, the United States Nuclear Regulatory Commission (hereinafter referred to as the Commission) entered into an Agreement on March 29, 1984 (hereinafter referred to as the Agreement of March 29, 1984) with the State of Utah under Section 274 of the Atomic Energy Act of 1954, as amended (hereafter referred to as the Act) which became effective on April 1, 1984, providing for discontinuance of the regulatory authority of the Commission within the State under Chapters 6, 7, and 8 and Section 161 of the Act with respect to byproduct materials as defined in Section 11e.(1) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and,

Whereas, the Commission entered into an amendment to the Agreement of March 29, 1984 (hereinafter referred to as the Agreement of March 29, 1984, as amended) pursuant to the Act providing for discontinuance of regulatory authority of the Commission with respect to the land disposal of source, byproduct, and special nuclear material received from other persons which became effective on May 9, 1990; and,

Whereas, the Governor of the State of Utah requested, and the Commission agreed, that the Commission reassert Commission authority for the evaluation of radiation safety information for sealed sources or devices containing byproduct, source or special nuclear materials and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission; and,

Whereas, the Governor of the State of Utah is authorized under Utah Code Annotated 19–3–113 to enter into this amendment to the Agreement of March 29, 1984, as amended, between the Commission and the State of Utah; and,

Whereas, the Governor of the State of Utah has requested this amendment in accordance with Section 274 of the Act by certifying on January 2, 2003 that the State of Utah (hereinafter referred to as the State) has a program for the control of radiological and non-radiological hazards adequate to protect the public health and safety and the environment with respect to byproduct material as defined in Section 11e.(2) of the Act and facilities that generate this material and that the State desires to assume regulatory responsibility for such material; and,

Whereas, the Commission found on August 4, 2004, that the program of the State for the regulation of materials covered by this Amendment is in accordance with the requirements of the Act and in all other respects compatible with the Commission's program for the regulation of byproduct material as defined in Section 11e.(2) of the Act and is adequate to protect public health and safety; and,

Whereas, the State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that the State and the Commission programs for protection against hazards of radiation will be coordinated and compatible; and,

Whereas, this Amendment to the Agreement of March 29, 1984, as amended, is entered into pursuant to the provisions of the Act.

Now, Therefore, it is hereby agreed between the Commission and the Governor of the State, acting on behalf of the State, as follows:

Section 1. Article I of the Agreement of March 29, 1984, as amended, is amended by adding a new paragraph B and renumbering paragraphs B through D as paragraphs C through E. Paragraph B will read as follows:

"B. Byproduct materials as defined in Section 11e.(2) of the Act;"

Section 2. Article II of the Agreement of March 29, 1984, as amended, is amended by deleting paragraph E and inserting a new paragraph E to implement the reassertion of Commission authority over sealed sources and devices to read:

"E. The evaluation of radiation safety information on sealed sources or devices containing byproduct, source, or special nuclear materials and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission."

Section 3. Article II of the Agreement of March 29, 1984, as amended, is amended by numbering the current Article as "A" by

placing an A in front of the current Article language. The subsequent paragraphs A through E are renumbered as paragraphs 1 through 5. After the current amended language, the following new Paragraph B is added to read:

"B. Notwithstanding this Agreement, the Commission retains the following authorities pertaining to byproduct material as defined in Section 11e.(2) of the Act:

1. Prior to the termination of a State license for such byproduct material, or for any activity that resulted in the production of such material, the Commission shall have made a determination that all applicable standards and requirements pertaining to such material have been met;

2. The Commission reserves the authority to establish minimum standards governing reclamation, long-term surveillance or maintenance, and ownership of such byproduct material and of land used as a disposal site for such material. Such reserved authority includes:

a. The authority to establish terms and conditions as the Commission determines necessary to assure that, prior to termination of any license for such byproduct material, or for any activity that results in the production of such material, the licensee shall comply with decontamination, decommissioning, and reclamation standards prescribed by the Commission; and with ownership requirements for such materials and its disposal site;

b. The authority to require that prior to termination of any license for such byproduct material or for any activity that results in the production of such material, title to such byproduct material and its disposal site be transferred to the United States or the State of Utah at the option of the State (provided such option is exercised prior to termination of the license);

c. The authority to permit use of the surface or subsurface estates, or both, of the land transferred to the United States or the State pursuant to 2.b. in this Section in a manner consistent with the provisions of the Uranium Mill Tailings Radiation Control Act of 1978, as amended, provided that the Commission determines that such use would not endanger public health, safety, welfare, or the environment;

d. The authority to require, in the case of a license for any activity that produces such byproduct material (which license was in effect on November 8, 1981), transfer of land and material pursuant to paragraph 2.b. in this Section taking into consideration the status of such material and land and interests therein, and the ability of the licensee to transfer title and custody thereof to the United States or the State;

e. The authority to require the Secretary of the Department of Energy, other Federal agency, or State, whichever has custody of such byproduct material and its disposal site, to undertake such monitoring, maintenance, and emergency measures as are necessary to protect public health and safety, and other actions as the Commission deems necessary; and

f. The authority to enter into arrangements as may be appropriate to assure Federal long-term surveillance or maintenance of such byproduct material and its disposal site on land held in trust by the United States for any Indian Tribe or land owned by an Indian Tribe and subject to a restriction against alienation imposed by the United States."

Section 4. Article IX of the 1984 Agreement, as amended, is renumbered as Article X and a new Article IX is inserted to read:

"ARTICLE IX

In the licensing and regulation of byproduct material as defined in Section 11e.(2) of the Act, or of any activity which results in the production of such byproduct material, the State shall comply with the provisions of Section 274o of the Act. If in such licensing and regulation, the State requires financial surety arrangements for reclamation or long-term surveillance and maintenance of such byproduct material:

A. The total amount of funds the State collects for such purposes shall be transferred to the United States if custody of such byproduct material and its disposal site is transferred to the United States upon termination of the State license for such byproduct material or any activity that results in the production of such byproduct material. Such funds include, but are not limited to, sums collected for long-term surveillance or maintenance. Such funds do not, however, include monies held as surety where no default has occurred and the reclamation or other bonded activity has been performed; and

B. Such surety or other financial requirements must be sufficient to ensure compliance with those standards established by the Commission pertaining to bonds, sureties; and financial arrangements to ensure adequate reclamation and long-term management of such byproduct material and its disposal site."

This amendment shall become effective on August 15, 2004, and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII of the Agreement of March 29, 1984, as amended.

Done at Rockville, Maryland, in triplicate, this 10th day of August 2004.

For the United States Nuclear Regulatory Commission.

/RA/
Nils J. Diaz,
Chairman.

Done at Salt Lake City, Utah, in triplicate, this 16th day of August 2004.

For the state of Utah.

/RA/
Olene S. Walker,
Governor.

[FR Doc. 04–20190 Filed 9–3–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

State of Utah: Final Determination on Proposed Alternative Groundwater Standards for 11e.(2) Byproduct Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Final Commission Determination under Section 274o of the Atomic Energy Act of 1954, as amended; State of Utah Proposed Alternative Groundwater Standards.

SUMMARY: This notice is announcing that on August 4, 2004, the Nuclear Regulatory Commission (NRC) made the determination required by section 274o of the Atomic Energy Act of 1954, as amended (Act) for Agreement State proposed alternative standards for 11e.(2) byproduct material. The Commission has determined that the State of Utah's proposed alternative groundwater standards will achieve a level of stabilization and containment of the sites concerned, and a level of protection for public health, safety, and the environment from radiological and non-radiological hazards associated with such sites, which is equivalent to, to the extent practicable, or more stringent than the level which would be achieved by standards and requirements adopted and enforced by the Commission for the same purpose and any final standards promulgated by the Administrator of the Environmental Protection Agency in accordance with section 275 of the Act. This notice completes the notice and public hearing process required in section 274o of the Act for proposed State alternative standards.

FOR FURTHER INFORMATION CONTACT: Dennis M. Sollenberger, Office of State and Tribal Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone (301) 415–2819 or e-mail *DMS4@nrc.gov.*

SUPPLEMENTARY INFORMATION: The Commission approved a similar process to that specified at 10 CFR part 2, subpart H to fulfill both provisions for notice and for opportunity for public hearing required by section 274o of the Act. The Commission published a notice and opportunity for public hearing in the **Federal Register** on the State of Utah's proposed alternative groundwater standards for a 30-day comment period (68 FR 51516, August 27, 2003). On October 24, 2003, the Commission published a clarification of the notice and opportunity for public hearing in the August 27, 2003 notice, noticed the electronic availability of two

documents referenced in the earlier notice, and extended the comment period for an additional 30 days (68 FR 60885). The public comment period ended on November 24, 2003. The Commission received three comment letters on Utah's alternative groundwater standards proposal (ML032750048, ML032820353, and ML033420067) and one letter with supplements on the Commission's alternative standards determination process (ML032720672, ML032750048, and ML033140034). The NRC staff prepared a letter response dated June 21, 2004 (ML041770014) to the commenter on the Commission's alternative standards determination process.

The NRC staff prepared an analysis of comments for the comments received on Utah's proposed alternative groundwater standards (ML042240488). One commenter did not object to Utah's alternative groundwater regulations; however, the commenter said the discharge permit discussions on implementation is the test of the standards. Another commenter stated that the Utah's proposed alternative groundwater standards were equivalent or more stringent than the NRC and EPA groundwater standards. The third commenter raised concerns with NRC's past implementation of its groundwater standards and wants Utah to implement a more rigorous groundwater protection program. No deficiencies in Utah's proposed alternative groundwater standards were identified by the commenters.

The Commission considered the information provided in SECY–03–025 (ML032901045) which included the State of Utah comparison between Utah's proposed alternative groundwater standards and NRC's standards, and the NRC staff's initial determination that Utah's proposed alternative groundwater standards are equivalent to or more stringent than the NRC groundwater standards. The Commission considered the comments submitted in response to the August 27 and October 24, 2003 **Federal Register** notices and the NRC staff's analysis of the comments, and the NRC staff's recommendation that the Commission approve a final determination that Utah's alternative groundwater standards meet the requirements in section 274o of the Act. On August 4, 2004, the Commission made a determination that Utah's alternative groundwater standards are equivalent to or more stringent than the NRC's groundwater standards for 11e.(2) byproduct material (ML042170320).

The documents referenced above and publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 31st day of August, 2004.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 04–20191 Filed 9–3–04; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Committee Meetings

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on:

Thursday, October 14, 2004;
Thursday, October 28, 2004;
Thursday, November 18, 2004.

The meetings will start at 10 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chair, five representatives from labor unions holding exclusive bargaining rights for Federal blue-collar employees, and five representatives from Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meetings either the labor members or the management members may caucus separately with the Chair to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of a meeting.

Annually, the Chair compiles a report of pay issues discussed and concluded recommendations. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chair on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5538, 1900 E Street NW., Washington, DC 20415 (202) 606–1500.

Dated: August 31, 2004.

Mary M. Rose,

Chairperson, Federal Prevailing Rate Advisory Committee.

[FR Doc. 04–20232 Filed 9–3–04; 8:45 am]

BILLING CODE 6325–49–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Representative Payee Monitoring.

(2) *Form(s) submitted:* G–99a, G–99c.

(3) *OMB Number:* 3220–0151.

(4) *Expiration date of current OMB clearance:* 10/31/2004.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Individuals or households.

(7) *Estimated annual number of respondents:* 6,000.

(8) *Total annual responses:* 6,535.

(9) *Total annual reporting hours:* 2,032.

(10) *Collection description:* Under Section 12(a) of the Railroad Retirement Act, the RRB is authorized to select, make payments to, and conduct transactions with an annuitant's relative or some other person willing to act on behalf of the annuitant as a representative payee. The collection obtains information needed to determine if a representative payee is handling benefit payments in the best interest of the annuitant.

FOR FURTHER INFORMATION CONTACT: Copies of the forms and supporting documents can be obtained from Charles Mierzwa, the agency clearance officer (312–751–3363) or *Charles.Mierzwa@rrb.gov*.

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 or *Ronald.Hodapp@rrb.gov* and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Charles Mierzwa,

Clearance Officer.

[FR Doc. 04–20187 Filed 9–3–04; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50291; File No. PCAOB–2004–04]

Public Company Accounting Oversight Board; Order Approving Proposed Rules Relating To Oversight of Non-U.S. Registered Public Accounting Firms

August 30, 2004.

I. Introduction

On June 18, 2004, the Public Company Accounting Oversight Board (the "PCAOB") filed with the Securities and Exchange Commission (the "Commission") proposed rules pursuant to section 107 of the Sarbanes-Oxley Act of 2002 (the "Act") and section 19(b) of the Securities Exchange Act of 1934 (the "Exchange Act"), relating to oversight of non-U.S. registered public accounting firms. Notice of the proposed rules was published in the **Federal Register** on July 26, 2004,[1] and the period for public comment ended on August 16, 2004. The Commission received five comment letters relating to these rules. For the reasons discussed below, the Commission is granting approval of the proposed rules.

II. Description

The Act directs the PCAOB to conduct a continuing program of inspections of registered public accounting firms and to investigate alleged violations of the Act, related securities laws, and auditing and related professional practice standards. Under the Act, non-U.S. registered public accounting firms are subject to PCAOB inspections and investigations to the same extent as U.S. registered public accounting firms.[2] The PCAOB's proposed rules provide that, in conducting its inspections and investigations of non-U.S. firms, the PCAOB, in appropriate circumstances, may rely on the work of non-U.S. oversight systems, based on the PCAOB's analysis of the independence and rigor of that home country oversight system. The proposed rules supplement, rather than replace or supersede, the PCAOB's existing rules with respect to inspections and investigations of registered public accounting firms, which apply to both domestic and foreign registered public accounting firms.

With respect to inspections, the proposed rules establish a cooperative framework that uses a "sliding scale" approach, in which the degree of reliance the PCAOB will place on a firm's home country oversight system will vary depending on the PCAOB's analysis of that system. The PCAOB will determine the degree, if any, to which it may rely on an inspection conducted pursuant to a non-U.S. firm's home country oversight system. After making that determination, the PCAOB, to the extent consistent with its responsibilities under the Act, will conduct its own inspection of the firm in question in a manner that relies on the non-U.S. oversight system to the degree the PCAOB has determined to be appropriate. In making its determination, the PCAOB will evaluate information concerning the home country oversight system's level of independence and rigor, including (1) the adequacy and integrity of the oversight system, (2) the independence of the system's operation from the auditing profession, (3) the nature of the system's source of funding, (4) the transparency of the system, and (5) the system's historical performance. The rules contain examples of the criteria the PCAOB might apply in determining the appropriate level of reliance to place on a non-U.S. oversight system. The rules also provide that the PCAOB's evaluation of the appropriate degree of reliance to place on a non-U.S. oversight system will be based on its discussions with the appropriate oversight authority within that system, including discussions concerning the specific inspection work program proposed for the firm in question.

With respect to investigations of conduct that may violate laws in both the United States and a foreign jurisdiction, the proposed rules provide that, in appropriate circumstances, the PCAOB may rely on a non-U.S. oversight authority's investigation or sanction of that firm. The PCAOB's reliance would depend in part on its assessment of the independence and rigor of the non-U.S. oversight system and also may depend on the oversight authority's willingness to update the PCAOB regarding the investigation on a regular basis and its authority and willingness to share relevant evidence with the PCAOB.

The PCAOB's proposed rules also provide that the PCAOB may, as it deems appropriate, provide assistance to non-U.S. oversight authorities that are conducting inspections or investigations of U.S. registered public accounting firms pursuant to a non-U.S. oversight system. The rules provide that, in determining the extent of the assistance it will provide, the PCAOB may consider the independence and rigor of the non-U.S. oversight system that has requested the PCAOB's assistance.

III. Discussion

The Commission received five comment letters regarding the PCAOB's proposed rules for oversight of non-U.S. registered accounting firms.[3] The commenters generally supported the PCAOB's willingness to rely, to the extent possible, on inspections and investigations of non-U.S. firms by their home country oversight bodies. Several commenters also recognized that the PCAOB already had made modifications to respond to certain of the comments the PCAOB received during its development of the proposed rules.

Three of the commenters expressed concern with the PCAOB statement that,

[1] Release No. 34–50047 (July 20, 2004); 69 FR 44555 (July 26, 2004).

[2] Section 106(a) of the Act.

[3] The comments were submitted by two accounting firms, a professional association of non-U.S. accountants and two non-U.S. governmental authorities.

in determining the degree of reliance it would place on another oversight system, it would consider the background, qualifications and independence of the persons involved in that oversight system. The PCAOB has stated, however, that it would consider a variety of factors with no single factor being determinative, and that its level of reliance will not depend on how similar the oversight system is to the PCAOB. One of these commenters also disagreed with the PCAOB's decision not to permit appeals of its determinations about reliance on other oversight systems, but welcomed the PCAOB's statement that it would discuss its determinations with the home country oversight body.

One commenter expressed concern that the PCAOB-designated "expert" on U.S. accounting and auditing matters might not be able to obtain full access to audit workpapers, due to conflicts with non-U.S. laws. That commenter encouraged the PCAOB to wait until it had more experience in working with non-U.S. oversight bodies before requiring that such an expert participate in each inspection, in order to avoid duplication of effort. The PCAOB's view is that using "experts" will help ensure that inspections of non-U.S. firms by foreign oversight bodies address compliance with U.S. requirements.

Two commenters expressed concern with PCAOB participation in non-U.S. oversight activities and argued for mutual recognition of other oversight systems if the U.S. and non-U.S. systems are equivalent. The PCAOB considered the possibility of instituting a mutual recognition system, but rejected that idea in favor of a system that gives the PCAOB more flexibility to determine how best to carry out its responsibilities under the Act. One of these commenters also noted the risk of multiple inspections and investigations of "internationally active" companies and the risk that such companies could be subject to duplicative sanctions for the same offense, but also welcomed the PCAOB's commitment to continued discussions of potential legal conflicts and its willingness to consider reciprocal assistance to other oversight bodies. A third commenter also suggested that the PCAOB take greater account of international law conflicts, which in some jurisdictions may prohibit or restrict the PCAOB from entering the jurisdiction to inspect or investigate local entities, unless there is an agreement with or cooperation from local authorities. We understand that the PCOAB is discussing these matters with its foreign counterparts.

Under the proposed rules the PCAOB has broad discretion in determining the extent to which, in carrying out its statutory authority to inspect and investigate registered public accounting firms, it will rely on the work of non-U.S. oversight systems, and the extent to which it will provide assistance to non-U.S. oversight systems. Many of the issues relating to implementation of the proposed cooperative framework will be negotiated by the PCAOB on a case-by-case basis with non-U.S. oversight bodies in those jurisdictions where such an oversight body exists. Like the United States, other jurisdictions also are in the process of developing or strengthening their own systems for auditor oversight. We encourage the PCAOB to continue its discussions with non-U.S. oversight bodies and to consider ways it can work cooperatively with its foreign counterparts to carry out its responsibilities under the Act.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rules are consistent with the requirements of the Act and the securities laws and are necessary and appropriate in the public interest and for the protection of investors.

It is therefore ordered, pursuant to section 107 of the Act and section 19(b)(2) of the Exchange Act, that the proposed rules governing oversight of non-U.S. registered public accounting firms (File No. PCAOB–2004–04) be and hereby are approved.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2072 Filed 9–3–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50292; File No. SR–CBOE–2004–39]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. Relating to Extending a Limited Pilot Program for Maximum Bid/Ask Differentials

August 31, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 7, 2004, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On August 19, 2004, the Exchange filed Amendment No. 1 to the proposed rule change.[3] In Amendment No. 1, CBOE changed the filing from a proposed rule change filed under Section 19(b)(2)of the Act[4] to one filed under Section 19(b)(3)(A) of the Act.[5] Specifically, the Exchange designated its filing as non-controversial pursuant to Section 19(b)(3)(A)(iii) of the Act[6] and to Rule 19b–4(f)(6).[7] Accordingly, the proposed rule change became effective upon filing Amendment No. 1 on August 19, 2004. The Commission is publishing this notice, as amended, to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules to extend a limited pilot program relating to maximum bid/ask differentials.[8] The text of the proposed rule change, as amended, is available at the offices of the Exchange and the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Angelo Evangelou, Senior Attorney, CBOE, to Kelly M. Riley, Assistant Director, Division of Market Regulation, Commission, dated August 19, 2004 ("Amendment No. 1"). In Amendment No. 1, the Exchange submitted a new Form 19b–4, which replaced and superseded the original filing in its entirety.

[4] 15 U.S.C. 78s(b)(2).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 15 U.S.C. 78s(b)(3)(A)(iii).

[7] 7 17 CFR 240.19b–4(f)(6).

[8] *See* Securities Exchange Act Release No. 48471 (September 10, 2003), 68 FR 54251 (September 16, 2003) (SR–CBOE–2003–08).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to extend a limited pilot exemption to the Market-Maker bid/ask differential requirements contained in CBOE Rule 8.7(b)(iv). As part of accommodating compliance with the Linkage Plan,[9] the Exchange introduced an "autofade" functionality which causes one side of CBOE's disseminated quote to move to an inferior price when the quote is required to fade pursuant to the terms of the Linkage Plan and/or when the size associated with the quote has been depleted by the Retail Automatic Execution System ("RAES") (of both Linkage orders and non-Linkage orders).

Linkage orders are generally Immediate or Cancel limit orders priced at the national best bid or offer ("NBBO") that must be acted upon within 15 seconds. The Linkage Plan provides several instances in which a Participant receiving a linkage order must fade its quote. For example, if a Participant receives a Principal Acting as Agent ("PA") order for a size greater than the Firm Customer Quote Size and does not execute the entirety of the PA Order within 15 seconds, the Participant is required to fade its quote. CBOE's autofade functionality automates the fading process to ensure that members (and the Exchange) are in full compliance with this aspect of the Linkage Plan. Autofade moves CBOE's quote to a price that is 1-tick inferior to the NBBO.[10] This ensures that the Exchange will not immediately receive additional linkage orders to allow the member to refresh the quote (either manually or through an autoquote update).

As mentioned above, autofade also applies anytime an automatic execution (of any order) via RAES has depleted the size of CBOE's quote. Once a quote is exhausted, autofade moves the quote to a price that is 1-tick inferior to the NBBO (as described above). Autofade is only necessary for classes that are not on the Exchange Hybrid System. Thus, this exemption is only needed until the full rollout of the Hybrid System is completed.

For equity option classes that are not trading on the Hybrid System, the CBOE quote is generally derived from an autoquote system that is maintained by the Designated Primary Market-Maker ("DPM"). Certain DPMs utilize an Exchange-provided autoquote system while others employ proprietary autoquote systems. In either case, the autoquote system calculates bid and ask *prices* that are transmitted to the Exchange for dissemination to the Options Price Reporting Authority ("OPRA"). The DPM and the trading crowd separately input the *size* associated with the bid/ask prices. When an automatic execution occurs through the RAES system, the size associated with the quote is decremented until it is exhausted. However, because the autoquote system is only calculating prices and not quote sizes, the autoquote system is not aware that the size has been exhausted (or in the case of a remaining balance on a Linkage order, that the quote needs to fade in order to comply with the Linkage Plan). Therefore, the autofade functionality was built to override autoquote and move the quote price to 1-tick inferior to the NBBO. The "override" period only lasts for 30 seconds. However, the override can be overridden during that 30-second time period if the quote is manually updated by a trader or if the autoquote system transmits new bid/ask pricing to the Exchange.

The exemption is for limited instances where the autofade functionality moves the quote in a manner that causes the quote width to widen beyond the bid/ask parameters provided pursuant to CBOE Rule 8.7(b)(iv). CBOE seeks to extend on a pilot basis the temporary exception to the requirements of CBOE Rule 8.7(b)(iv) in cases where *autofade* causes a quote that exceeds the quote width parameters of that rule. The proposed exemption period lasts for a maximum of 30 seconds after any given autofade that caused a wider quote than allowed under CBOE Rule 8.7(b)(iv). Thus, to the extent a quote remained outside of the maximum width after the 30-second time period, the responsible broker or dealer disseminating the quote would be deemed in violation of CBOE Rule 8.7(b)(iv) for regulatory purposes. CBOE proposes that the pilot run until February 17, 2006 (for 18 months) when all multiply listed classes are trading on CBOE's Hybrid Trading System.

2. Statutory Basis

The Exchange represents that the proposed rule change, as amended, will, among other things, allow the Exchange to more easily comply with the requirements of the Linkage Plan. Accordingly, the Exchange believes the proposed rule change, as amended, is consistent with Section 6(b) of the Act[11] in general and furthers the objectives of Section 6(b)(5)[12] in particular in that it promotes just and equitable principles of trade, serves to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6) thereunder[14] because the foregoing proposed rule does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[15]

[9] The Plan for the Purpose of Creating and Operating an Intermarket Options Linkage ("Linkage Plan") was originally approved on July 28, 2000. *See* Securities Exchange Act Release No. 43086, 65 FR 48023 August 4, 2000).

[10] The only exception is when CBOE's NBBO quote (or next best quote) is represented by a customer order in the book. In such cases, the Exchange does not fade a booked order (it would have to be traded).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2004–39 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–CBOE–2004–39. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal offices of CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2004–39 and should be submitted on or before September 28, 2004.

that period to commence on August 19, 2004, the date CBOE filed Amendment No. 1 to the proposed rule change. *See* 15 U.S.C. 78s(b)(3)(C).

[16] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2079 Filed 9–3–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50279; File No. SR–DTC–2004–08]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Investor's Voluntary Redemptions and Sales Service

August 27, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 2, 2004, The Depository Trust Company ("DTC") filed a proposed rule change with the Securities and Exchange Commission ("Commission") as described in Items I, II, and III below, which Items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will enhance DTC's Investor's Voluntary Redemptions and Sales ("IVORS") service to allow for the communication and processing of unit investment trust ("UIT") rollover instructions.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[2]

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

Prior to this rule change, DTC participants holding expired UITs could only redeem such assets for cash or receive securities by book-entry and sell back to the UIT's sponsor in exchange for a cash payment.[3] The flow of instructions and confirmations typically occurs outside DTC using faxes or e-mails between the participant and the sponsor or sponsor's agent. Settlement of the transaction was usually accomplished by the submission of deposit/withdrawal at custodian ("DWAC") instructions. This process was very manual and labor intensive and exposed participants, agents, and sponsors to risk and expense.

Under this proposed rule change, DTC will enhance its IVORS service to allow participants to rollover their current UIT into any of up to ten new UITs that the transfer agent or sponsor may have designated as being eligible for the rollover. Under the new procedures, the UIT transfer agent or sponsor will announce the details of an eligible UIT rollover using IVORS. Once announced, DTC will create a new communication code that will include the deadline for submitting rollover instructions thereby enabling participants to submit rollover instructions to their current UIT.

As with the current IVORS redemption function, prior to the transaction settlement date of the transaction, the transfer agent or sponsor enters the settlement details into IVORS. In the case of rollovers, these details will include the redemption price of the surrendered UIT, any accrued dividends that are payable, the purchase price of the new UIT, and any concession fee that may be payable. On settlement date, IVORS processes the necessary entries to debit the surrendered UITs and credit participants with the new UITs and any associated cash-in-lieu or other payments. All of this is accomplished within the IVORS system, eliminating the need to process faxed instructions and DWAC entries.

DTC's proposed rule is designed to eliminate unnecessary certificate movements, reduce and simplify cash movements, and synchronize the decisions of all parties involved in the rollover of UITs. The proposed rule

[3] Upon maturity (and in some cases earlier), most UITs allow a shareholder to take the redemption value of their holding and roll it over into a new series of UITs. These instructions are submitted prior to the deadline established by the transfer agent or sponsor.

change is consistent with the requirements of Section 17A of the Act and the rules and the regulations thereunder applicable to DTC in that it promotes efficiencies in the prompt and accurate clearance and settlement of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

DTC has not solicited nor received written comments on the proposed rule change. DTC will inform the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) [4] of the Act and Rule 19b–4(f)(4) [5] thereunder because it effects a change in an existing service of DTC that does not adversely affect the safeguarding of securities or funds in DTC's control or for which DTC is responsible and does not significantly affect DTC's or its participants' respective rights or obligations. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–DTC–2004–08 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–DTC–2004–08. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at DTC's principal office and on DTC's Web site at *http://www.dtc.org*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–DTC–2004–08 and should be submitted on or before September 28, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2077 Filed 9–3–04; 8:45 am]

BILLING CODE 8010–01–P

[4] 4 15 U.S.C. 78s(b)(3)(A)(iii).

[5] 5 17 CFR 240.19b–4(f)(4).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50294; File No. SR–MSRB–2004–02]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change Relating to Amendments to the MSRB's Rule G–12(f) on Automated Comparison and G–14 on Transaction Reporting, and to the Implementation of a Facility for Real-Time Transaction Reporting and Price Dissemination

August 31, 2004.

On June 2, 2004, the Municipal Securities Rulemaking Board ("MSRB" or "Board"), filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to the MSRB's implementation of real-time transaction reporting and price dissemination. The proposed rule change was published for comment in the **Federal Register** on June 29, 2004.[3] The Commission received one comment letter on the proposal.[4] This order approves the proposed rule change.

I. Description of the Proposed Rule Change

The MSRB's proposed rule change relates to Rule G–12(f), on automated comparison, Rule G–14, on transaction reporting, and the implementation of a facility for real-time transaction reporting and price dissemination (the "Real-Time Transaction Reporting System" or "RTRS"). The purpose of the proposed rule change is to increase transparency in the municipal securities market and to enhance the surveillance database and audit trail of transaction data used by enforcement agencies. The proposed rule change to Rule G–14 would require brokers, dealers, and municipal securities dealers ("dealers") to report transactions in municipal securities to RTRS within 15 minutes of the time of trade execution instead of by midnight on trade date, as is currently required. Upon receipt of this transaction data, RTRS would immediately perform automated error

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 49902 (June 22, 2004), 69 FR 38925 (June 29, 2004) ("Notice").

[4] *See* letter to Jonathan G. Katz, Secretary, Commission, from Leslie M. Norwood, Vice President and Assistant General Counsel, The Bond Market Association ("TBMA"), dated July 20, 2004 ("TBMA Letter").

checking and would electronically disseminate prices, providing the municipal securities market with real-time transaction price transparency.

The MSRB expects the proposed RTRS facility for real-time collection and dissemination of transaction prices will become operational in January 2005, at which time MSRB would begin to disseminate transaction data electronically in real time. MSRB expects to make a second filing on the RTRS facility in the future, stating the date of effectiveness, describing the technical means of data dissemination, and proposing fees to be charged for RTRS data products.

The proposed RTRS facility would replace the existing Transaction Reporting System (TRS), which currently receives and disseminates transaction data in an overnight batch process. The proposed amendments to Rules G–12 and G–14 require dealer participation in RTRS and are designed to ensure that transactions are reported to RTRS in a timely manner.

II. Summary of Comments

The Commission received one comment letter addressing the proposed rule change.[5] The TBMA Letter expressed support for the MSRB's goals, but expressed reservations regarding the proposal in its current form.[6] Specifically, TBMA believes that all trades on the first day of trading in a new issue should be exempt from the requirement to report within 15 minutes of trade execution (*i.e.* real-time reporting).[7] In addition, TBMA states that they "continue to express liquidity concerns for immediate dissemination of trades of bonds rated "BBB" or below in sizes over $1 million."[8]

A. New Issue Reporting

The proposed rule change generally would require dealers to report trades to the MSRB within 15 minutes, with certain limited exceptions. First, syndicate managers, syndicate members, and selling group members that effect trades in new issues on the first day of trading at the list offering price would be required to report such trades by the end of the first day of trading in the issue. Second, on a temporary basis, a dealer would be required to report trades within three hours of the time of trade if the CUSIP number and indicative data of the issue traded are not in the dealer's securities master file, the dealer has not traded the issue in the previous year, and the dealer is not a syndicate manager or syndicate member for the issue. This provision would sunset automatically one year after RTRS implementation.

In its comment letter, TBMA reiterated its suggestion made in previous comment letters to the MSRB that all trades on the first day of a new issue be exempt from 15-minute reporting and, be submitted no later than end of day.[9] In the proposed rule change, MSRB acknowledged that the existing information dissemination services in the municipal securities market may not, in some cases, be capable of providing a dealer with such indicative information in a sufficiently timely manner for the dealer to update its securities master file, process the transaction, and then report the transaction in real-time.[10] Therefore, the proposed rule change provides that when a dealer has not traded an issue within the past year, a three-hour trade reporting requirement will apply rather than a 15-minute reporting requirement.

The proposed rule change also states that on the first day of trading in a new issue, the three-hour exception will be available to most dealers because they will be trading the issue for the first time.[11] However, by the terms of the three-hour exception, it is not available to dealers in the underwriting group (*i.e.*, the syndicate manager and syndicate members).[12] TBMA disagrees with this decision and states "we feel the exception is not adequate because it does not cover trades by a syndicate manager or syndicate member and sunsets after one year."[13] In the Notice, the MSRB stated that they intentionally made the three-hour exception temporary to help ensure that dealers, trade associations and information vendors will use the one-year period to respond to the need for more automated and timely updating of indicative data and that industry practice will evolve so that the purposes of real-time price transparency can be more fully realized for trades on the first day of trading in a new issue.[14] Furthermore, the MSRB noted that the three-hour exception should not be necessary for the syndicate manager and syndicate members because they do have, or should have, timely access to information on a new issue that they are underwriting.[15]

TBMA also noted that on "the first day trades are executed for a new issue, which is the day of formal award for a new issue, there will likely be trades reflecting that day's market environment, in addition to trades reflecting the booking of tickets at the prices agreed to by the original buyers days before."[16] TBMA argues that by mixing the two types of trade reports together, the prices would "not be any more or less informative if all trades in new issue were subject to end-of-day reporting."[17] With respect to the specific issue of "mixing" prices, the MSRB notes that syndicate and selling group trades done at the list price will be marked as such when they are disseminated.[18] Consequently, there should be no confusion about what these prices represent. In addition, the MSRB has stated that it is reviewing general market practices with respect to new issue offerings, including issues related to pre-award orders and the use of conditional trading commitments made before the time of formal award trade. As part of this process, the MSRB recently published a "Notice Requesting Comment on Draft Amendments to Rule G–34 to Facilitate Real-Time Transaction Reporting and Explaining Time of Trade for Reporting New Issue Trades."[19]

B. Liquidity Concerns

Finally, TBMA states "we continue to express liquidity concerns for immediate dissemination of trades of bonds rated "BBB" or below in sizes over $1 million."[20] TBMA suggests further study of this market segment to assess effects on liquidity before disseminating trade prices in real-time.[21] The MSRB noted in its filing that comment on this particular issue was mixed and that some investors expressed strong support for full transparency, specifically to include the

[5] *See supra* note 4.

[6] *See* TBMA Letter, at 2.

[7] *See* TBMA Letter, at 3.

[8] *See* TBMA Letter, at 4.

[9] *See* TBMA Letter, at 2 and 3.

[10] *See supra* note 3, at 38937.

[11] *Id.*

[12] *Id.*

[13] *See* TBMA Letter, at 2.

[14] *See supra* note 3, at 38937.

[15] Although the three-hour exception is not available to dealers in the underwriting group, the proposed rule change provides another exception from the real-time reporting requirement for list-price transactions by syndicate and selling group members. Such trades are likely to be voluminous and all executed in a short period of time, so that a 15-minute reporting deadline could present substantial operational challenges. Because of the operational difficulties and because the price information (the list price of the issue) is generally already available in the market at the time of trade execution, the proposed rule change allows these transactions to be reported at end-of-day. Trades that are not at list price, however, do not qualify for this exception and will have to be reported within 15 minutes unless another exception is available. *See supra* note 3, at 38937.

[16] *See* TBMA Letter, at 3.

[17] *Id.*

[18] *See supra* note 3, at 38937.

[19] *See* MSRB Notice 2004–18 (June 18, 2004), available at *http://www.msrb.org.*

[20] *See* TBMA Letter, at 4.

[21] *See* TBMA Letter, at 3 and 4.

market segment identified by TBMA.[22] In light of these comments, the MSRB has weighed the potential for liquidity problems against the potential for transparency benefits and has concluded that any liquidity problems that may occur with respect to the issues in question are likely to be temporary and will resolve over time as market participants make adjustments in response to the more transparent environment.[23] The MSRB also believes that the potential for transparency benefits, such as more accurate pricing, lower transaction costs for investors and increased investor confidence, outweighs the potential for short-term liquidity problems.[24]

III. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change and comment letter, and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB[25] and, in particular, the requirements of Section 15B(b)(2)(C) of the Act and the rules and regulations thereunder.[26] Section 15B(b)(2)(C) of the Act requires, among other things, that the MSRB's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

In particular, the Commission finds that the proposed rule change will provide the market with more efficient pricing information, enhance the surveillance database and audit trail of transaction data used by enforcement agencies, and enhance investor confidence in the market. The Commission believes that real-time price transparency will enhance investor confidence by providing, for the first time, a comprehensive and contemporaneous view of the municipal securities market to any interested party. The Commission also believes that the open availability of market prices should instill greater confidence that pricing mechanisms in the municipal securities market are fair, open, and efficient.

IV. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[27] that the proposed rule change (SR–MSRB–2004–02) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[28]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2076 Filed 9–3–04; 8:45 am]

BILLING CODE 8010–01–P

[22] *See supra* note 3, at 38939.

[23] *Id.*

[24] *Id.*

[25] In approving this rule the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[26] 15 U.S.C. 78o–4(b)(2)(C).

[27] 15 U.S.C. 78s(b)(2).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50280; File No. SR–OCC–2004–13]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Borrowing Against the Clearing Fund

August 27, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 23, 2004, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend Article VIII (Clearing Fund), Section 5 (Application of the Clearing Fund), paragraph (e) of OCC's By-Laws, which authorizes OCC to borrow against the clearing fund in specified situations.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Article VIII, Section 5(e) of OCC's By-Laws authorizes OCC to take possession of and pledge as security for a loan cash and securities in its clearing fund under the following circumstances:

(1) If a clearing member is suspended and OCC is unable to obtain prompt delivery of or convert promptly to cash any asset credited to any of the clearing member's accounts; and as a result OCC deems it necessary or advisable to borrow funds to meet obligations arising out of the suspension or

(2) If OCC sustains a loss due to the failure of a bank or another clearing organization, and elects to borrow funds in lieu of immediately charging the loss to the clearing fund.

In either case, OCC must first determine that it cannot borrow the necessary funds on an unsecured basis and must use the proceeds from the borrowing solely for the purposes above. Such use of clearing fund assets are limited to a maximum of 30 days. After 30 days, the amount of the loan must be charged against the clearing fund.

In the event of a clearing member default, OCC may need immediate liquidity even before it has made the decision to suspend the clearing member. Historically, defaults tend to occur at 9 a.m. (CT) when clearing members' accounts are debited for options premiums, exercise settlement payments, and mark-to-market payments.[3] Although OCC may be able to make settlement by using its own cash or by borrowing against its unsecured credit lines, which are currently $20 million, it is possible that those resources would not be sufficient.

In order to borrow against its secured lines of credit, which are currently $150 million and are in the process of being doubled, using a defaulting member's clearing fund contributions or collateral OCC would have to (i) suspend the clearing member and (ii) have difficulty in obtaining or liquidating the defaulting clearing member's collateral.

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

[3] 9 a.m. (CT) is also the time when members' accounts are debited for margin deficiencies; but margin payments, unlike premium, exercise settlement, and mark-to-market payments, are not pass-through payments.

If a default is not quickly remedied, OCC will likely suspend the defaulting clearing member. However, OCC believes that it should not have to make the decision to suspend as a precondition to borrowing against the clearing fund. Similarly, OCC believes that it should not be a precondition to such use of the clearing fund that OCC is unable to obtain "prompt" delivery of, or convert "promptly" to cash, any asset credited to an account of a defaulting clearing member. OCC interprets "prompt" and "promptly" in this context as meaning "in sufficient time to enable OCC to use the proceeds to meet its obligations." However, OCC does not believe that its ability to such use of the clearing fund should turn on questions of interpretation.

Accordingly, OCC is proposing to amend Article VIII, Section 5(e) of its By-Laws to eliminate the requirements that OCC (i) suspend a defaulting clearing member and (ii) be unable to obtain prompt delivery of collateral or be unable to convert it promptly to cash as preconditions to use of the clearing fund. As amended, Section 5(e) would allow OCC to use clearing fund assets as collateral for loans whenever OCC deems such borrowings to be necessary or advisable in order to meet obligations arising out of the default or suspension of a clearing member or any action taken by OCC in connection therewith.

OCC believes that the proposed rule change is consistent with Section 17A of the Act and the regulations thereunder because it enhances OCC's ability to respond to and manage clearing member defaults in a manner that increases the protection of investors and persons facilitating transactions by and acting on behalf of investors and because it limits systematic risk.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve the proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–OCC–2004–13 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–OCC–2004–13. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at *http://www.optionsclearing.com*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–OCC–2004–13 and should be submitted on or before September 28, 2004. For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2078 Filed 9–3–04; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #P044]

Commonwealth of the Northern Mariana Islands (Amendment #1)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective August 23, 2004, the above numbered Public Assistance declaration is hereby amended to include the islands of Agrigan, Alamagan, and Pagan located within the Commonwealth of Northern Mariana Islands as disaster areas due to damages caused by flooding, high surf, high winds, and wind driven rain associated with Typhoon Tingting occurring on June 27–29, 2004.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is September 27, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59008)

Dated: August 27, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–20181 Filed 9–3–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3618]

Commonwealth of the Northern Mariana Islands

As a result of the President's major disaster declaration for Public Assistance on August 26, 2004, and Amendment 1 adding Individual Assistance on August 27, 2004, I find that the islands of Rota, Saipan, and Tinian, located within the Commonwealth of the Northern Mariana Islands, constitute a disaster area due to damages caused by flooding, high surf, storm surge, and high winds as a result

[4] 17 CFR 200.30–3(a)(12).

of Super Typhoon Chaba occurring on August 21, 2004, and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on October 26, 2004, and for economic injury until the close of business on May 27, 2005, at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 419004, Sacramento, CA 95841–9004.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	6.375
Homeowners without credit available elsewhere	3.187
Businesses with credit available elsewhere	5.800
Businesses and non-profit organizations without credit available elsewhere	2.900
Others (including non-profit organizations) with credit available elsewhere	4.875
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	2.900

The number assigned to this disaster for physical damage is 361806 and for economic injury the number is 9ZT100.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 30, 2004.

Cheri L. Cannon,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 04–20183 Filed 9–3–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3607]

Commonwealth of Pennsylvania; Amendment #1

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency—effective August 25, 2004, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning on August 1, 2004, and continuing through August 25, 2004.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is October 5, 2004 and for economic injury the deadline is May 6, 2005.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 27, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–20182 Filed 9–3–04; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Approval From the Office of Management and Budget (OMB) of One New Public Collection of Information

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the FAA invites public comment on one new public information collection which will be submitted to OMB for approval.

DATES: Comments must be received on or before November 8, 2004.

ADDRESSES: Comments may be mailed or delivered to the FAA at the following address: Ms. Judy Street, Room 613, Federal Aviation Administration, Standards and Information Division, APF–100, 800 Independence Ave., SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Street at the above address or on (202) 267–9895.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to collection of information unless it displays a currently valid OMB control number. Therefore, the FAA solicits comments on the following collection of information in order to evaluate the necessity of the collection, the accuracy of the agency's estimate of the burden, the quality, utility, and clarity of the information to be collected, and possible ways to minimize the burden of the collection in preparation for submission to approve the clearance of the following information collection.

1. 2120–XXXX, SWIFT Customer Satisfaction Survey. The FAA wishes to add a survey to the automated staffing solutions under the umbrella of Selections WithIn Faster Times (SWIFT) system. The FAA will use the information gathered to determine if individuals applying for jobs on-line are satisfied with the automated staffing solution. The survey will provide the FAA with information that will enable them to improve and enhance their automated systems. The estimated annual reporting burden is 2,500 hours.

Issued in Washington, DC, on August 31, 2004.

Judith D. Street,

FAA Information Collection Clearance Officer, APF–100.

[FR Doc. 04–20256 Filed 9–3–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2004–71]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before September 17, 2004.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number FAA–200X–XXXXX] by any of the following methods:

- Web site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

• Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Tim Adams (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on August 31, 2004.

Anthony F. Fazio,

Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2004–18174.

Petitioner: Air Tahoma, Inc.

Section of 14 CFR Affected: 14 CFR 121.354.

Description of Relief Sought: To allow a delay in installation of required terrain awareness and warning systems and an approved terrain situational awareness display on Air Tahoma, Inc.'s Convair 580 airplanes prior to the March 29, 2005 deadline.

[FR Doc. 04–20253 Filed 9–3–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2004–72]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before September 17, 2004.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number FAA–200X–XXXXX] by any of the following methods:

• Web site: *http://dms.dot.gov*. Follow the instructions for submitting comments on the DOT electronic docket site.

• Fax: 1–202–493–2251.

• Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.

• Hand Delivery : Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Tim Adams (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on August 31, 2004.

Anthony F. Fazio,

Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2000–8182.

Petitioner: Washoe County Sheriff's Office.

Section of 14 CFR Affected: 14 CFR 61.113(e).

Description of Relief Sought: To amend Washoe County Sheriff's Office's exemption by revising condition No. 5 to permit the Washoe County Sheriff's Air Squadron (Air Squadron) to transport needed supplies and search specialists or teams, such as dogs, mantrackers, and technical rescue teams, to the scene of a rescue when conducting search and location missions. The current exemption allows members of the Air Squadron who hold private pilot certificates to continue to be reimbursed for fuel, oil, and maintenance expenses incurred while performing search and location missions.

[FR Doc. 04–20254 Filed 9–3–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 04–05–C–00–HTS To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Tri-State Airport, Huntington, WV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Tri-State Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 159).

DATES: Comments must be received on or before October 7, 2004.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Beckley Airports District Office, 176 Airport Circle, Room 101, Beaver, West Virginia 25813.

In addition, on copy of any comments submitted to the FAA must be mailed or delivered to Mr. Larry Salyers, Airport Director of the Tri-State Airport Authority at the following address: 1449 Airport Road, Huntington, West Virginia 25704–9043.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Tri-State Airport Authority under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Larry F. Clark, Manager, Airports District Office, 176 Airport Circle, Room 101, Beaver, West Virginia 25813, (304) 252–6216. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Tri-State Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On August 23, 2004, the FAA determined that the application to impose and use the revenue from a PFC submitted by Tri-State Airport Authority was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 7, 2004.

The following is a brief overview of the application.

PFC application No.: 04–05–C–00–HTS.

Level of the proposed PFC: $3.00.

Proposed charge effective date: December 1, 2007.

Proposed charge expiration date: December 1, 2011.

Total estimated PFC revenue: $436,233.

Brief description of proposed project(s):

—Taxiway A Rehabilitation
—Water System Rehabilitation
—Acquire Friction Measuring Equipment
—Aircraft Rescue & Fire Fighting (ARFF) Building Rehabilitation
—Airfield Drainage Rehabilitation
—Passenger Facility Charge (PFC) Preparation
—Terminal Building Renovations and Loading Bridge
—Relocate and Replace Rotating Beacon
—Acquire Snow Removal Equipment (2 Plows, 1 Cab Over Truck)
—Air Carrier Apron Rehabilitation
—General Aviation Apron Rehabilitation

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Non-Scheduled/On Demand Air Carrier Operators filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional airports office located at: 1 Aviation Plaza, Airports Division, AEA–610, Jamaica, New York 11434.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Central West Virginia Regional Airport Authority.

Issued in Beckley, West Virginia on August 24, 2004.

Larry F. Clark,

Manager, Beckley ADO, Eastern Region.

[FR Doc. 04–20255 Filed 9–3–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Riverside County, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public of its intent to prepare a Draft Environmental Impact Statement for a proposed realignment of State Route 79, from Domenigoni Parkway to Gilman Springs Road, in the cities of Hemet and San Jacinto, the community of Winchester and unincorporated Riverside, County, California.

FOR FURTHER INFORMATION CONTACT: Tay Dam, Senior Project Development Engineer, Federal highway Administration, 888 South Figueroa, Suite 1850, Los Angeles, California, 90017. Telephone: (213) 202–3954. E-mail: *tay.dam@fhwa.dot.gov* (and) Hideo Sugita, Deputy Executive Director, Riverside County Transportation Commission, P.O. Box 12008, Riverside, California 92502–2208. Telephone: (951) 787–7141. E-mail: *hsugita@rctc.org.*

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation, District 8, and the Riverside County Transportation Commission, will prepare an Environmental Impact Statement (EIS) to realign State Route (SR) 79 1.2 miles south of Domenigoni Parkway to Gilman Sprints Road. The proposed realignment corridor to be evaluated is located east of the existing SR 79, through the community of Winchester, and west of the existing route as it passes through Hemet and San Jacinto.

A range of alignment alternatives will be analyzed in the EIS/EIR. Alignment alternatives in the western, central and eastern portions of the project area were identified through an alternatives analysis process described in detail in the Project Criteria and Alternatives Selection for Preliminary Agreement, dated June 22, 2004. These alignment alternatives will be analyzed. The western alignment begins at the southern project limit along Winchester Road, approximately 1.2 miles south of Domenigoni Parkway. It continues north, crossing Domenigoni Parkway and Salt Creek Channel, 0.5 mile east of Winchester Road. The alignment then turns east and parallels Florida Avenue on the south before turning north, paralleling and then crossing the San Diego Canal near Esplanade Avenue. North of Esplanade Avenue, the western alignment continues in a northeast direction and splits into two (2) potential alignments, one following Odell Avenue and one paralleling the Casa Loma Canal, before reconnecting immediately south of the intersection of Sanderson Avenue and North Ramona Boulevard. The western alignment then continues north on Sanderson Avenue and crosses Ramona Expressway to the San Jacinto River.

The central alignment begins at the southern project limit along Winchester Road and continues in a northeast direction crossing Domenigoni Parkway and continuing east, paralleling Salt Creek Channel. It then travels north, east of the San Diego Canal. North of Devonshire Avenue, the central alignment will occur on top of Warren Road, west of Tres Cerritos Hills to Seventh Street. The alignment then heads northeast to parallel the Casa Loma Canal to Sanderson Avenue. Then the central alignment continues north, east of Sanderson Avenue, crosses Ramona Expressway to the northern project limit immediately south of San Jacinto River. The eastern alignment begins at the southern project limit along Winchester Road and continues north, turning northeast after crossing the Salt Creek Channel. The alignment continues northeast paralleling the railroad tracks until Sanderson Avenue. Northeast of the Hemet-Ryan Airport, the eastern alignment turns north in the vicinity of Sanderson Avenue. The alignment continues north along Sanderson Avenue and crosses Ramona Expressway to the San Jacinto River.

The above-described alignment alternatives will be further refined through efforts conducted under the National Environmental Policy Act (NEPA)/Section 404 of the Clean Water Act Memorandum of Understanding integrating the two processes, incorporating comments from the public scoping process, as well as analysis in technical studies. In addition to the build alternatives, a no-build alternative also will be analyzed in the EIS as required by NEPA. Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who previously have expressed, or are

known to have, an interest in this project. A scoping meeting will be held for this project in Hemet on Wednesday, September 29, 2004, at the James Simpson Memorial Center, 305 East Devonshire Avenue, beginning at 6:30 p.m. and in San Jacinto on Wednesday, October 6, 2004, at the San Jacinto Unified School District conference room, 2045 San Jacinto Avenue, beginning at 6:30 p.m. Project documents and information are available for review on the project Web site located at: *http://www.sr79project.info.* The Web site contains project information and will be updated as the project progresses.

To ensure that the full range of issues and alternatives related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from interested parties. Comments or questions concerning this proposed action and the Draft EIS should be directed to the FHWA, at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: August 31, 2004.

Maiser Khaled,

Director, Project Development & Environment, Federal Highway Administration, Sacramento, California.

[FR Doc. 04–20214 Filed 9–3–04; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Waiver Petition Docket Number FRA–2004–18746]

Union Pacific Railroad Company; Notice of Public Hearing and Extension of Comment Period

On August 10, 2004, FRA published a notice in the **Federal Register** announcing the Union Pacific Railroad Company's (UP) request to be granted a waiver of compliance from certain provisions of the *Brake System Safety Standards for Freight and Other Non-passenger Trains and Equipment; End of Train Devices,* 49 CFR Part 232, *Freight Car Safety Standards,* 49 Part 215, and *Locomotive Safety Standards,* 49 Part 299. *See* 69 FR 48558. Specifically, UP requests relief from the requirements of § 232.205 *Class I Brake Test-Initial Terminal Inspection,* § 232.409 *Inspection and Testing of End-of-Train,* § 215.13 *Pre-departure Inspection,* § 229.21 *Daily Inspection.*

UP requests that the above provisions of the Federal regulations be waived to permit run-through trains that originate in Mexico and are interchanged with the UP at the Laredo, Texas Gateway, to operate into the interior of the United States without having to perform inspections at the U.S./Mexican border, provided that the trains receive proper inspections in Mexico by Transportacion Ferroviaria Mexicana (TFM), according to the standards prescribed in CFR Parts 232, 215, and 229. The Texas Mexican Railway (TexMex) would maintain all records required by applicable regulations for ready access on the U.S. side of the border for FRA inspections. In addition, TFM has provided written consent for FRA to conduct inspections of their facilities and inspection practices.

FRA has received comments from both the Brotherhood of Locomotive Engineers (BLE) and the Brotherhood of Railway Carmen (BRC) requesting a 90-day extension of the comment period. In addition, BLE has requested an oral public hearing. This notice grants both of these requests. However, FRA does not believe it is necessary to extend the comment period for the full 90 days, as requested. At this time, FRA is extending the comment period to one week beyond the date of the public hearing. If information received at the public hearing warrants the need to extend the comment period further, a separate notice will be published indicating such extension.

Accordingly, a public hearing is hearby set to begin at 9 a.m. on October 1, 2004 at the Federal Railroad Administration, 1120 Vermont Avenue NW., Washington, D.C. 20005, in the 7th floor conference room. Interested parties are invited to present oral statements at this hearing. The hearing will be informal and will be conducted in accordance with FRA's Rules of Practice (49 CFR Part 211.25) by a representative designated by FRA. FRA's representative will make an opening statement outlining the scope of the hearing, as well as any additional procedures for the conduct of the hearing. The hearing will be a non-adversarial proceeding in which all interested parties will be given the opportunity to express their views regarding this waiver petition without cross-examination. After all initial statements have been completed, those persons wishing to make a brief rebuttal statements will be given an opportunity to do so in the same order in which initial statements were made.

In addition, FRA is extending the comment period to October 8, 2004. All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2004–18746) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78). The Statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC on August 31, 2004.

Grady C. Cothen, Jr.,

Acting Associate Administrator for Safety.

[FR Doc. 04–20251 Filed 9–1–04; 2:46 pm]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–106012–98]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–106012–98 (TD 8936), Definition of Contribution

in Aid of Construction Under Section 118(c)(1.118–2).

DATES: Written comments should be received on or before November 8, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Paul H. Finger, Internal Revenue Service, Room 6512, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage at Internal Revenue Service, Room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Definition of Contribution in Aid of Construction Under Section 118(c).

OMB Number: 1545–1639.

Regulation Project Number: REG–106012–98.

Abstract: This regulation provides guidance with respect to section 118(c), which provides that a contribution in aid of construction received by a regulated public water or sewage utility is treated as a contribution to the capital of the utility and excluded from gross income.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 300.

Estimated Average Time Per Respondent: 1 hour.

Estimated Total Annual Reporting Hours: 300.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 30, 2004.

Paul H. Finger,

IRS Reports Clearance Officer.

[FR Doc. 04–20245 Filed 9–3–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 1 Taxpayer Advocacy Panel (Including the States of New York, Connecticut, Massachusetts, Rhode Island, New Hampshire, Vermont, and Maine)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 1 Taxpayer Advocacy Panel will be conducted in Portsmouth, New Hampshire. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Monday, September 27 and Tuesday, September 28, 2004.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227 (toll-free), or 718–488–3557 (non toll-free).

SUPPLEMENTARY INFORMATION: An open meeting of the Area 1 Taxpayer Advocacy Panel will be held Monday, September 27, 2004 from 9am EDT to 5pm EDT at the Entergy Training Building located at 185 Old Ferry Road, Brattleboro, Vermont and Tuesday, September 28, 2004 from 9am EDT to 3pm EDT at the Holiday Inn Express located at 100 Chickering Road, Brattleboro, VT 05301. Individual comments are welcomed and will be limited to 5 minutes per person. If you would like to have the TAP consider a written statement write Marisa Knispel, TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or, you may post comments to the Web site: *http://www.improveirs.org.*

The agenda will include: Various IRS issues.

Dated: September 1, 2004.

Bernard E. Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 04–20246 Filed 9–3–04; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register
Vol. 69, No. 172
Thursday, September 2, 2004

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AB76

Common Crop Insurance Regulations; Pecan Revenue Crop Insurance Provisions

Correction

In rule document 04–19446 beginning on page 52157 in the issue of Wednesday, August 25, 2004, make the following corrections:

§ 457.167 [Corrected]

1. On page 52157, in the third column, in newly added §457.167, under the heading *13. Settlement of Claim*, in paragraph (d)(2)(ii), "§457.167(d)(2)(i)" should read "section 13(d)(2)(i)".

2. On the same page, in the same column, in the same section, under the same heading, in paragraph (d)(2)(iv), "§457.167(d)(2)(iii)" should read "section 13(d)(2)(iii)".

3. On the same page, in the same column, in the same section, under the same heading, in paragraph (d)(2)(v), "§457.167(d)(2)(ii)" should read "section 13(d)(2)(ii)".

[FR Doc. C4–19446 Filed 9–3–04; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 122

[CBP Dec. 04–28]

Technical Corrections to Customs and Border Protection Regulations

Correction

In rule document 04–19577 beginning on page 52597 in the issue of Friday, August 27, 2004, make the following correction:

§122.62 [Corrected]

On page 52599, in the third column, in § 122.62, in amendatory instruction 16.c., in the 4th and 5th lines, "Export Administration Regulations." should read "Export Administration Regulations".

[FR Doc. C4–19577 Filed 9–3–04; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Tuesday,
September 7, 2004

Part II

Securities and Exchange Commission

17 CFR Parts 200 and 240

Rule 15c3–3 Reserve Requirements for Margin Related to Security Futures Products; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200 and 240

[Release No. 34–50295; File No. S7–34–02]

RIN 3235–AI61

Rule 15c3–3 Reserve Requirements for Margin Related to Security Futures Products

AGENCY: Securities and Exchange Commission (the "Commission").

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission ("Commission") is adopting amendments to the formula for determination of customer reserve requirements of broker-dealers under the Securities Exchange Act of 1934 to address issues related to customer margin for security futures products. The amendments permit a broker-dealer to include margin related to security futures products written, purchased, or sold in customer securities accounts required and on deposit with a registered clearing agency or a derivatives clearing organization as a debit item in calculating its customer reserve requirement under specified conditions. The amendments are intended to help ensure that a broker-dealer is not required to fund its customer reserve requirements with proprietary assets. In addition, the Commission is adopting a rule amendment delegating authority to the Director of the Division of Market Regulation to provide relief, under certain circumstances, from the conditions under which margin related to customer security futures products margin may be included as a debit item.

DATES: Effective October 7, 2004.

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, Associate Director, at (202) 942–0132; Thomas K. McGowan, Assistant Director, at (202) 942–4886; or Matthew B. Comstock, Special Counsel, at (202) 942–0156, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001.

I. Introduction

The Commission published proposed amendments to Rule 15c3–3a [1] for comment in the **Federal Register** on September 23, 2002 (the "Proposal").[2] The Proposal delineated the method for calculating broker-dealer customer reserve requirements in light of enactment of the Commodity Futures Modernization Act of 2000 ("CFMA")[3] and the commencement of trading in security futures products. The Commission now is adopting the final rule amendments described below.

A. Background

The CFMA, which became law on December 21, 2000, amended the Commodity Exchange Act ("CEA") and the Securities Exchange Act of 1934 ("Exchange Act") to permit the trading of single stock and narrow-based index futures ("security futures") and established a framework for the regulation of security futures products ("SFPs").[4] An SFP is both a security and a future.[5] Thus, a customer who wishes to buy or sell an SFP must conduct the SFP transaction through a person registered both with the Commodity Futures Trading Commission ("CFTC") as either a futures commission merchant ("FCM") or an introducing broker ("IB") and with the Commission as a broker-dealer.

B. Protection of Customer Funds Related to SFP Transactions in Customer Securities Accounts

The term "customer," as defined in Exchange Act Rule 15c3–3, includes a person who holds an SFP in a securities account.[6] The Commission adopted Rule 15c3–3 in 1972, in part, to ensure that a broker-dealer in possession of customers' funds either deployed those funds "in safe areas of the broker-dealer's business related to servicing its customers" or, if not deployed in such areas, deposited the funds in a reserve bank account to prevent commingling of customer and firm funds.[7] Rule 15c3–3 requires a broker-dealer to calculate what amount, if any, it must deposit on behalf of customers in the reserve bank account, entitled "Special Reserve Bank Account for the Exclusive Benefit of Customers" ("Reserve Bank Account"), under the formula set forth in Rule 15c3–3a ("Reserve Formula").[8] Generally, the Reserve Formula requires a broker-dealer to calculate any amounts it owes its customers and the amount of funds generated through the use of customer securities, called credits, and compare this amount to any amounts its customers owe it, called debits.[9] If credits exceed customer debits, the broker-dealer must deposit that net amount in the Reserve Bank Account.[10]

C. Clearance and Settlement of SFPs

A broker-dealer may clear and settle an SFP transaction through a clearing agency registered with the Commission ("Clearing Agency") [11] or through a derivatives clearing organization ("DCO") [12] registered with the CFTC.[13] Section 17A does not require a DCO to register as a Clearing Agency with the Commission if the only securities it clears are SFPs.[14] Similarly, a Clearing Agency is not required to register as a DCO with the CFTC if the only futures it clears are SFPs.[15]

As part of the clearance and settlement process for customer SFP transactions, a Clearing Agency or DCO (collectively, a "Clearing Organization"), under its rules, will require the broker-dealer carrying customer SFP accounts to post margin at the Clearing Organization. The Clearing Organization requires this margin to protect itself if a broker-dealer defaults on its obligations to the Clearing Organization related to SFPs. The broker-dealer, in turn, must collect margin from the customer who engages in the SFP transaction.[16] Customer margin protects the broker-dealer if the customer defaults on its obligations under an SFP transaction.

II. The Proposed Amendments

The Proposal would have permitted a broker-dealer to include margin related to SFPs written, purchased, or sold in customer securities accounts required and on deposit with a Clearing Organization as a debit item in calculating its customer reserve requirement, subject to the conditions set forth in Note G of the Proposal. Note G would have helped to ensure that a Clearing Organization maintained sufficient financial resources and creditworthiness to protect customer SFP margin on deposit. The standards set forth in Note G of the Proposal are discussed below in detail.

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[1] 17 CFR 240.15c3–3a.

[2] Exchange Act Release No. 46492 (Sept. 12, 2002), 67 FR 59747 (Sept. 23, 2002).

[3] Pub. L. 106–554, 114 Stat. 2763 (2000).

[4] The term "security futures product" includes both a security future and any option or privilege on a security future. CEA section 1a(32) (7 U.S.C. 1a(32)) and Exchange Act section 3(a)(56) (15 U.S.C. 78c(a)(56)).

[5] Exchange Act sections 3(a)(10) and (11) (15 U.S.C. 78c(a)(10) and (11)).

[6] *See* 17 CFR 240.15c3–3(a)(1) (definition of "customer"), which was amended in 2002. *See also* Exchange Act Release No. 46473 (Sept. 9, 2002), 67 FR 58284.

[7] Exchange Act Release No. 9856 (Nov. 10 1972), 37 FR 25224; 17 CFR 240.15c3–3(e).

[8] 17 CFR 240.15c3–3(e)(1) and (2).

[9] 17 CFR 240.15c3–3(e)(2).

[10] 17 CFR 240.15c3–3(e)(2).

[11] Exchange Act section 17A (15 U.S.C. 78q–1).

[12] CEA section 1a(9) (7 U.S.C. 1a(9)).

[13] CEA sections 5b (a), (b) and (c) (7 U.S.C. 7a–1(a), (b) and (c)).

[14] Exchange Act section 17A(b)(7)(A) (15 U.S.C. 78q–1(b)(7)(A)).

[15] CEA section 7a–1(a)(2) (7 U.S.C. 7a–1(a)(2)).

[16] 17 CFR 240.400 *et seq.*

III. Overview of the Comments Received

The Commission requested not only general comments, but also solicited comments on each aspect of the Proposal. The Commission received five comment letters, two from The Options Clearing Corporation ("OCC"), a Clearing Agency and DCO; and one each from Chicago Mercantile Exchange Inc. ("CME"), a designated contract market [17]; the Futures Industry Association ("FIA"), and The Steering Committee on Securities Futures of the Futures Industry Association and Securities Industry Association ("FIA/SIA Steering Committee"). All of the commenters supported the Commission's determination to permit a broker-dealer to treat margin related to SFPs written, purchased, or sold in customer securities accounts required and on deposit with a Clearing Organization as a debit item in calculating its reserve requirement under the Reserve Formula. The commenters noted, among other things, that Clearing Organizations hold funds that the broker-dealer already has set aside to satisfy customer claims. Thus, inclusion of the debit in the Reserve Formula reduces the amount that a broker-dealer must deposit in its Reserve Bank Account on behalf of customers.

The OCC and the FIA, however, generally opposed the requirements set forth in proposed Note G. OCC and FIA questioned the need for the conditions and OCC expressed concerns about the costs and burdens of compliance. The FIA/SIA Steering Committee expressed concerns that broker-dealer might face liquidity problems if a Clearing Organization no longer could meet the requirements of proposed Note G. The FIA/SIA Steering Committee also objected that broker-dealers could not easily determine if a Clearing Organization could meet the requirements of proposed Note G.

Finally, we note that in its second letter, OCC requests the Commission to amend the Reserve Formula to allow for a debit related to what it describes as "customer cross-margining accounts." [18] The requested amendment, however, is being addressed in another context and, in any event, is outside of the scope of these final amendments.

We address the comments in greater detail below in the discussion of the final amendments.

IV. Final Amendments

A. General

The Commission has reviewed carefully the comments received and is adopting final amendments to Rule 15c3–3a, with certain modifications in response to comments received. Specifically, the final amendments redesignate Item 14 as Item 15, add a new Item 14 and new Note G, amend Note B and amend newly redesignated Item 15, as described below.

Generally, these final amendments permit a broker-dealer to include the amount of customer SFP margin required and on deposit at a Clearing Organization as a debit in the Reserve Formula.[19] The Reserve Formula requires a broker-dealer that clears and carries SFPs in securities accounts on behalf of customers to include cash that it receives from the customer as a credit item in calculating the customer reserve requirement.[20] Before we adopted these amendments, however, the Reserve Formula would not have permitted a broker-dealer that clears and carries SFPs in securities accounts on behalf of customers to record an offsetting debit for customer SFP margin that it posts with a Clearing Organization. Without the amendments to Rule15c3–3a, the broker-dealer would be required to fund its customer reserve requirement at least in part with proprietary assets, which would require the broker-dealer to maintain two reserves to cover the same customer property, one reserve in the Reserve Bank Account and the second with the Clearing Organization.

B. Item 14

Proposed new Item 14 would have permitted the broker-dealer to include a debit in its Reserve Formula computation to the extent of customer SFP margin required and on deposit with a Clearing Organization, subject to the conditions contained in Note G. The Commission did not receive any comments on proposed new Item 14 and adopts new Item 14 as proposed.

C. Item 15

The Commission proposed to amend Rule 15c3–3a to redesignate current Item 14 as proposed Item 15. Proposed Item 15 would have been amended to include a reference to proposed Item 14 relating to customer SFP margin in the computation of debits under the Reserve Formula.[21] The Commission did not receive any comments on this section and adopts Item 15 in the final amendments as set forth in the Proposal.

D. Note B

The Commission proposed to amend Note B to extend to SFPs the same Reserve Formula treatment currently afforded a letter of credit collateralized by customer securities deposited with OCC for options margin purposes. Under current Note B to the Reserve Formula, a broker-dealer that posts a letter of credit collateralized by customer securities at OCC as customer options margin must include the amount of that letter of credit as a credit item in its Reserve Formula computation, to the extent of the margin requirement. A broker-dealer records the credit because it uses customer assets to secure the letter of credit. A firm must include both the credit under Note B and the debit under Item 13 to set the customer reserve requirement at the appropriate level.

The Commission did not receive any comments on the proposed amendments to Note B and adopts the amendments to Note B as proposed. The final amendments do not change the treatment, delineated in pre-Proposal Note B, of letters of credit collateralized by securities used to meet customer options margin. Rather, under the final amendments, a broker-dealer that posts a letter of credit collateralized by customer securities at a Clearing Organization as customer SFP margin must include the amount of that letter of credit as a credit item in its Reserve Formula computation, to the extent of the margin requirement, just as it would for options margin deposited at OCC. As with options margin, the broker-dealer includes the credit because it uses customer assets to secure the letter of credit.[22]

E. Note G

Note G, as adopted, outlines the four conditions under which a broker-dealer may include customer SFP margin required and on deposit at a Clearing Organization as a debit in Item 14 of the

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[17] A "contract market" is "a board of trade designated by the [Commodity Futures Trading] Commission as a contract market under the Commodity Exchange Act or in accordance with" 17 CFR 1.3(h).

[18] Letter from William H. Navin, The Options Clearing Corporation to Mr. Jonathan G. Katz, Secretary, Securities and Exchange Commission ("OCC Letter"), dated Jan. 21, 2003, pp. 1–2.

[19] The final amendments provide customer SFP margin required and on deposit at a Clearing Organization with similar debit treatment under the Reserve Formula as customer options margin required and on deposit with OCC. To receive debit treatment under the Reserve Formula, the collateral posted at a Clearing Organization as customer SFP margin must be the same type of collateral posted at OCC as customer options margin

[20] 17 CFR 240.15c3–3, Item 1.

[21] Exchange Act Release No. 46492 (Sept. 12, 2002), 67 FR 59747, at 59754 (Sept. 23, 2002).

[22] 17 CFR 240.15c3–3a, Item 2, Note B.

Reserve Formula.[23] Specifically, the debit is includable only if a broker-dealer clears SFPs through a Clearing Organization that: (1) Meets certain minimum financial requirements; (2) deposits customer SFP margin in a bank account for the exclusive benefit of clearing members; (3) maintains safeguards for handling cash and securities, obtains fidelity bond coverage, and provides for period examinations by independent public accountants; and (4) in the case of DCOs, provides the Commission with an undertaking that permits representatives or designees of the Commission to examine it for compliance with Note G. The following sections explain Note G in detail.

1. The Conditions of Note G Generally

In its comment letter, the FIA states generally that the Commission should permit a broker-dealer to include customer SFP margin required and on deposit with a Clearing Organization as a debit item in its Reserve Formula calculation, as set forth in Item 14, regardless of whether the Clearing Organization meets the criteria contained in proposed Note G.[24] In support of its position, the FIA contends that as part of the Clearing Organization registration process, either the Commission or the CFTC necessarily determined that the Clearing Agency or DCO possessed sufficient financial and operational capacity to protect customer funds and securities.[25]

The FIA and FIA/SIA Steering Committee also contend that the Proposal places an undue burden on a broker-dealer to determine if a Clearing Organization meets the conditions set forth in proposed Note G.[26] Finally, the FIA/SIA Steering Committee asserts that the Proposal does not address the consequences for broker-dealers if a Clearing Organization no longer meets the criteria of Note G. Specifically, the FIA/SIA Steering Committee is concerned that if such an event occurs, customer SFP margin deposits at the Clearing Organization could pose liquidity risk to broker-dealers.[27]

The Commission believes the conditions set forth in Note G are necessary to protect customers. Generally, each debit permitted in the Reserve Formula effectively is fully secured. As noted above, the debit represents an amount that a customer owes the broker-dealer. Thus, if a customer defaults on its obligation, the broker-dealer could liquidate the collateral to recover what it is owed.

The debits associated with customer SFP margin required and on deposit at a Clearing Organization, however, are not secured. These debits represent SFP margin that a broker-dealer has posted with a Clearing Organization on behalf of customers. The Clearing Organization, however, does not post collateral with the broker-dealer. Consequently, if a Clearing Organization defaults on its obligation to return the collateral, the broker-dealer would be forced to obtain the margin through legal proceedings. The conditions set forth in Note G seek to ensure that a broker-dealer deposits customer SFP margin at a Clearing Organization that meets minimum standards for financial soundness and creditworthiness and that identifies, segregates, and protects customer funds and securities from outside liens. These conditions, therefore, aid in protecting unsecured customer SFP margin debits, consistent with the customer protection function of Rule 15c3–3, so that the margin will be available to return to customers, even in times of severe market stress.

The Commission is providing clarification in response to the FIA and FIA/SIA Steering Committee's comment on how a broker-dealer can determine if a Clearing Organization meets the conditions of Note G. We have added subparagraph (c) to Item 14, Note G to clarify that a broker-dealer must determine, at least annually, that the Clearing Organization meets the conditions of Item 14, Note G.[28] To make the determination, a broker-dealer could obtain written representations consistent with subparagraph (c) of Item 14 from the Clearing Organization, either directly or through its designated examining authority. A designated examining authority could publish a list, updated at least annually, of the Clearing Organizations that have represented to the designated examining authority that they meet the conditions of this Note G. Of course, a broker-dealer must make any determination in good faith.

Commenters also expressed concern about the consequences of a Clearing Organization's failure to meet the criteria of Note G on a continual basis. If a Clearing Organization no longer meets the conditions of Note G, the SRO or the Commission will consider promptly whether broker-dealers may continue to include related debits in the Reserve Formula under the relevant facts and circumstances.[29]

2. Subparagraph (a) to Note G

Under subparagraph (a) to proposed Note G, the range of customer SFP margin collateral acceptable for debit treatment would have consisted of cash, proprietary qualified securities, and letters of credit collateralized by customer securities. The CME argues that the Commission should expand the range of collateral acceptable for debit treatment in a broker-dealer's Reserve Formula calculation under subparagraph (a) to include money market mutual funds that meet specified requirements.[30]

The final amendments retain cash, proprietary qualified securities and letters of credit collateralized by customers' securities as the range of collateral acceptable for debit treatment. This collateral is identical to the collateral acceptable for debit treatment related to customer options margin required and on deposit at the OCC.[31] Moreover, subparagraph (a) to Note G is consistent with Rule 15c3–3's requirement that a broker-dealer deposit cash or qualified securities to meet its deposit requirement under the Reserve Formula.[32] Any expansion of that collateral is beyond the scope of this rulemaking.

3. Subparagraph (b)(1) to Note G

As described more fully below, under proposed subparagraph (b)(1) to Note G, a broker-dealer could have included customer SFP margin as a debit item in the Reserve Formula if it cleared SFPs through a Clearing Organization that met certain criteria. Specifically, subparagraph (b)(1) would have permitted a broker-dealer to include customer SFP margin required and on deposit at a Clearing Organization as a debit item in its Reserve Formula calculation if that Clearing Organization met one of two alternative conditions evidencing the sufficiency of its

[23] The modifications to Note G are discussed below.

[24] FIA Letter, p.2. OCC supports this position. *See* Letter from William H. Navin, The Options Clearing Corporation to Mr. Jonathan G. Katz, Secretary, Securities and Exchange Commission ("OCC Letter"), dated Oct. 23, 2002, pp. 5–6.

[25] *Id.*

[26] FIA Letter, p.2; FIA/SIA Letter, p.2.

[27] FIA/SIA Letter, p.2.

[28] *See* paragraph (c) of Item 14, Note G.

[29] The Commission could utilize a number of approaches in determining how to address whether a broker-dealer may continue to include customer SFP margin as a debit item if a Clearing Organization no longer meets the criteria of Note G. For example, the Commission could use its exemptive authority to exempt temporarily a broker-dealer from utilizing a Clearing Organization that complies with Note G.

[30] Letter from James J. McNulty, President and Chief Executive Officer, Chicago Mercantile Exchange Inc. to Mr. Jonathan G. Katz, Secretary, Securities and Exchange Commission ("CME Letter"), dated Oct. 22, 2002, pp. 1–2.

[31] *See* 17 CFR 240.15c3–3a, Note F.

[32] *See* 17 CFR 240.15c3–3(e)(1).

financial resources and its creditworthiness.

In the Proposal, the Commission requested comments on the creditworthiness standards contained in subparagraph (b)(1) to Note G. Specifically, the Commission asked if the conditions contained in subparagraph (b)(1) were necessary to help ensure that a broker-dealer conducted business with creditworthy Clearing Organizations. The Commission also asked if it should consider "different or additional criteria to determine creditworthiness."

In response to comments received, the final amendments add two alternative conditions, which are discussed below. One condition permits a showing of sufficiency of financial resources and creditworthiness based upon the amount of margin deposits that a Clearing Organization holds. The other alternative condition permits the Commission, upon written application, to exempt a Clearing Organization from the requirements of subparagraph (b)(1), upon such terms as are appropriate under the relevant facts and circumstances, after consideration of whether the exemption is necessary or appropriate in the public interest, and consistent with the protection of investors. The final amendments delegate the authority to grant the exemption to the Director of the Division of Market Regulation.

a. Subparagraph (b)(1)(i)

Subparagraph (b)(1)(i) of proposed Note G would have permitted a broker-dealer to include customer SFP margin deposited with a Clearing Organization as a debit item in the Reserve Formula if the Clearing Organization maintained the highest investment-grade rating from a nationally recognized statistical rating organization ("NRSRO").[33] OCC objects to this alternative financial sufficiency test arguing that, to some degree, a Clearing Organization cannot control its credit rating.[34] According to OCC, it operated safely for a number of years without the highest investment-grade rating from an NRSRO and other, sound Clearing Organizations currently operate without such a rating.[35]

The final amendments retain subparagraph (b)(1)(i) to Note G as one means for broker-dealers to comply with subparagraph (b)(1). This alternative is consistent with the customer protection function of Rule 15c3–3 and is necessary because of the unsecured nature of the customer SFP margin debit. A rating from an NRSRO is an indication from an independent source both of the long-term financial strength of a Clearing Organization and its general creditworthiness.

b. Subparagraph (b)(1)(ii)

Subparagraph (b)(1)(ii) to proposed Note G would have provided a second alternative to the investment-grade rating standard of subparagraph (b)(1)(i). Subparagraph (b)(1)(ii) would have permitted a broker-dealer to include customer SFP margin required and on deposit with a Clearing Organization as a debit item if, among other things, the Clearing Organization maintained security deposits from clearing members in connection with regulated options or futures transactions of at least $500 million and assessment power over member firms of at least $1.5 billion.

OCC objects to subparagraph (b)(1)(ii) as an alternative to the highest investment-grade rating test. OCC asserts that it might not be able to maintain security deposits of at least $500 million because of a proposed rule change pending before the Commission that would affect the manner in which it calculates its clearing fund.[36] Even if deposits remained above $500 million, OCC asserts that making the security deposit available to general creditors, as proposed subparagraph (b)(1) to Note G requires, conflicts with its bylaws.[37]

OCC also comments that the Commission should not set the financial resource standards at $500 million in security deposits and $1.5 billion in assessment power.[38] As noted, OCC believes that as part of the Clearing Organization registration process, either the Commission or the CFTC necessarily determined that the Clearing Organization possessed sufficient financial capacity to protect customer funds and securities. Moreover, OCC does not believe that the Commission intended to approve a financial standard under which a Clearing Organization that maintains $500 million in security deposits and $1.5 billion in assessment power would meet the standard, but a Clearing Organization that maintains a total of $2 billion in resources, but not the requisite amount of security deposits and assessment power, would not.[39]

In response to certain of OCC's comments, the Commission has revised the second alternative. The final amendments retain the $500 million security deposits requirement of proposed subparagraph (b)(1)(ii) to Note G. This requirement helps ensure that a Clearing Organization maintains liquidity and financial resources sufficient to protect customer margin on deposit, which is unsecured. Moreover, the Commission established the amount of the security deposit based upon the Commission staff's experience and their discussions with the industry.

The final rule amendments also define the term "security deposits" in subparagraph (b)(1)(ii) of Note G. Although the Commission did not propose a definition of this term, it did explain what it meant by the term and invited comments. Security deposits, as described in the Proposal, referred to a fund that a Clearing Organization could use to secure its general obligations to creditors. Commenters, however, expressed concerns that the explanation contained in the Proposal conflicted with the purposes for which Clearing Organizations could use their clearing funds.[40] In response, the Commission has modified the explanation of "security deposits" to address these concerns and incorporated this modified explanation as a definition in the rule text for purposes of clarity. As adopted, the term "security deposits," as defined in subparagraph (b)(1)(ii) of Note G, refers to a general fund that consists of cash or securities held by a Clearing Organization. The Clearing Organization may use this fund to protect participants and the Clearing Organization: (1) from the defaults of participants, and (2) from clearing agency losses (not including day-to-day operating expenses), such as losses of securities not covered by insurance or other resources of the Clearing Organization. The security deposit is in addition to, and separate from, margin deposited with the Clearing Organization.

In response to the OCC's comments, the Commission revised subparagraph

[33] Exchange Act Release No. 46492 (Sept. 12, 2002), 67 FR 59747, at 59749 (Sept. 23, 2002).

[34] OCC Letter, p. 3.

[35] OCC Letter, p. 3.

[36] *See* File No. SR–OCC–2002–03 (Jan. 29, 2002). The letter states the OCC's proposed rule change does not contain a $500 million minimum. Under the proposed rule chnage, the size of the fund would be related to risk margin and could vary substantially over time, possibly falling below $500 million. OCC also believes that such an occurrence would not reflect any reduction it its creditworthiness, "but would instead reflect a reduction in the size of the potential obligations that the clearing fund might be called upon to satisfy." Members of the Commission staff currently are reviewing the proposal. OCC Letter, pp. 3–4.

[37] *Id.*

[38] OCC Letter, p. 5. The term "assessment power" included in the final amendments to Rule 15c3–3a relates to a Clearing Organizations's ability, under its rules, to assess its members in excess of amounts required for a security deposit to meet emergency funding needs.

[39] *Id.*

[40] Clearing Organizations have indicated that they are likely to use their clearing funds as security deposits.

(b)(1)(ii) to Note G to allow a broker-dealer to include a debit for customer SFP margin on deposit with a Clearing Organization that, among other requirements, maintains security deposits and assessment power that equal a combined total of at least $2 billion, at least $500 million of which is in the form of security deposits. This requirement protects customers by helping to ensure that broker-dealers utilize Clearing Organizations that maintain a ready pool of liquid assets. It also provides additional flexibility by permitting broker-dealers to utilize a Clearing Organization that maintains any combination of at least $500 million in security deposits and assessment power that equals at least $2 billion.[41]

c. Subparagraph (b)(1)(iii) to Note G

As noted above, the Commission solicited comments on the creditworthiness standards contained in subparagraph (b)(1) to proposed Note G. OCC expressed concern that although it currently meets at least one of the conditions in subparagraph (b)(1) as set forth in the Proposal, it might not be able to meet them in the future, even though it might generally be creditworthy for purposes of clearing SFP transactions.[42]

In response to OCC's comments, the final amendments add new subparagraph (b)(1)(iii) to Note G, which was not part of the Proposal. Under subparagraph (b)(1)(iii), a broker-dealer may include customer SFP margin required and on deposit with a Clearing Organization as a debit in the Reserve Formula if, among other things, the Clearing Organization maintains at least $3 billion in margin deposits. The margin deposits may be a combination of proprietary and customer assets. The Commission believes, based upon discussions between Commission staff and the industry, that the significant level of margin deposits indicates that a Clearing Organization has sufficient financial resources to hold unsecured debits and, therefore, should be an alternative to the other options in subparagraph (b)(1). Moreover, the addition of subparagraph (b)(1)(iii) provides broker-dealers with greater flexibility in complying with Note G.

d. Subparagraph (b)(1)(iv) to Note G

In response to OCC's comments, the final amendments also add new subparagraph (b)(1)(iv) to Note G, which was not part of the Proposal. Subparagraph (b)(1)(iv) establishes procedures for the Commission, in its sole discretion, to provide an exemption that would enable a broker-dealer to utilize a Clearing Organization that does not meet the requirements of subparagraphs (b)(1)(i)–(iii) of Item 14, Note G to Rule 15c3–3a. The Commission may approve an exemption under subparagraph (b)(1)(iv), subject to such conditions as are appropriate under the circumstances, if the exemption and the conditions are necessary or appropriate in the public interest, and is consistent with the protection of investors. For example, a broker-dealer or a Clearing Organization, for the benefit of a broker-dealer, may demonstrate in writing that an exemption under subparagraph (b)(1)(iv) is necessary or appropriate in the public interest, and is consistent with the protection of investors by showing that the Clearing Organization possesses sufficient financial resources or is sufficiently creditworthy to hold unsecured debits. Moreover, as with subparagraph (b)(1)(iii), the addition of subparagraph (b)(1)(iv) provides broker-dealers with greater flexibility in complying with Note G.

4. Subparagraph (b)(2) to Note G

Under proposed subparagraph (b)(2) to Note G, a broker-dealer could have included customer SFP margin as a debit if it utilized a Clearing Organization that deposited the margin in a bank, as section 3(a)(6) of the Exchange Act defines the term.[43] Proposed subparagraph (b)(2) would have required the bank to agree in writing to refrain from placing a lien or otherwise attaching the account that contained customer margin.[44]

OCC states that proposed subparagraph (b)(2) would force it to change substantially the manner in which it handles clearing member margin deposits for non-futures accounts. OCC does not maintain separate bank or custodian accounts for customer, proprietary, or market maker margin.[45] Furthermore, OCC contends that it cannot deposit customer SFP margin in a Reserve Bank Account because it does not calculate customer SFP margin separately from other types of customer margin.[46] Rather, OCC determines margin requirements based upon the net risk of a portfolio of positions that includes other derivatives products.[47]

The final amendments alter the requirements of proposed subparagraph (b)(2) in response to the comments received. Unlike the Proposal, the final amendments to subparagraph (b)(2) do not require customer margin to be segregated from clearing member proprietary and market maker margin deposited at a bank. Under amended subparagraph (b)(2), a broker-dealer may include customer SFP margin as a debit item if it utilizes a Clearing Organization that obtains from a bank specific, written notification related to margin deposited at that bank or held at that bank and pledged to the Clearing Organization. In the written notification, the bank must acknowledge that any funds or securities deposited with it as margin, or held by it and pledged to a Clearing Organization as margin, are for the exclusive benefit of clearing members of the Clearing Organization, subject to the Clearing Organization's interest in the margin. The written notification also must state that the bank will hold such funds and securities in an account separate from any other accounts that the Clearing Organization maintains. Furthermore, the written notification must provide that the bank will not use cash or securities deposited or pledged as margin as security for a loan to the Clearing Organization, and agree not to encumber the cash and securities in any way. Subparagraph (b)(2), however, permits the Clearing Organization to pledge clearing member cash and securities to a bank for any purpose that Commission or Clearing Organization rules otherwise permit.

Subparagraph (b)(2), as adopted, will protect customer cash and securities, consistent with Rule 15c3–3. First, customer SFP margin will be segregated from Clearing Organization proprietary funds under subparagraph (b)(2). Consequently, a clearing member more easily could retrieve customer SFP margin from the Clearing Organization, if necessary. Second, subparagraph (b)(2) is intended to prevent the use of customer property for non-customer purposes because it requires identification of SFP margin, including customer SFP margin, and segregation of that margin from a Clearing Organization's proprietary funds and

[41] OCC asserts that a clearing member could withdraw its membership, rather than meet an obligation to pay an additional assessment. OCC Letter, p. 5. A Clearing Organization, however, need only possess the assessment authority. Moreover, a Clearing Organization may meet the entire $2 billion requirement of (b)(1)(ii) through maintenance of security deposits.

[42] *See* OCC Letter, p. 4.

[43] Exchange Act Release No. 46492 (Sept. 12, 2002), 67 FR 59747, at 29749 (Sept. 23, 2002).

[44] *Id.*

[45] OCC Letter, p. 7.

[46] OCC states that it will continue compliance with the Commoddity Exchange Act's segregation requirements with respect to funds deposited with the OCC as margin in a segregated futures account. OCC Letter, p. 7.

[47] *Id.* at p. 8.

securities. Rule 15c3–3 prohibits use of customer property to support non-customer activities.[48] Third, subparagraph (b)(2) prevents the bank at which a Clearing Organization holds funds and securities as SFP margin, including customer SFP margin, from utilizing that property for its own purposes.

5. Subparagraph (b)(3) to Note G

Subparagraph (b)(3) of proposed Note G would have required a broker-dealer to utilize a Clearing Organization that established, documented, and maintained safeguards with respect to the handling, transfer, and delivery of cash and securities; fidelity bond coverage for its employees and agents; and provisions for periodic examination from independent public accountants.[49]

OCC objects to subparagraph (b)(3)(ii). It asserts that it cannot easily obtain fidelity bond coverage for all of its agents.[50]

In response to comments received, the final amendments clarify the scope of paragraph (b)(3)(ii). First, a Clearing Organization must maintain fidelity bond coverage only for those employees or agents who handle customer funds or securities. Second, in the case of agents who handle customer funds or securities, the Clearing Organization must ensure only that the agent maintains fidelity bond coverage. The Clearing Organization itself need not maintain the coverage.[51]

6. Subparagraph (b)(4) to Note G

Under subparagraph (b)(3)(iv)[52] of proposed Note G, a broker-dealer could have included a debit in the Reserve Formula for customer SFP margin deposited at a DCO not otherwise registered with the Commission only if it utilized a DCO that had provided an undertaking to the Commission.[53] In the undertaking, the DCO would have agreed to examination by the Commission for compliance with proposed subparagraphs (b)(1) through (b)(3) of proposed Note G.[54]

The Commission did not receive any comments on proposed subparagraph (b)(3)(iv) and will retain a modified undertaking requirement in the final rules. The Commission believes that an undertaking is necessary to protect customer SFP margin on deposit with a DCO because it allows the Commission to examine a DCO for compliance with Note G. Subparagraph (b)(4) of the final rules clarifies, however, that the obligation to obtain the undertaking from the DCO rests with the broker-dealer who wishes to utilize the DCO. A broker-dealer may comply with subparagraph (b)(4) if it utilizes a DCO that has provided the Commission with a written undertaking, in a form acceptable to the Commission, under which the DCO agrees to be examined by the Commission for compliance with subparagraphs (b)(1) through (b)(3) to Note G.

F. One Chicago

In its first comment letter, OCC noted that its associate clearinghouse agreement with the Clearing Division of the CME, which relates to security futures traded on OneChicago, LLC, allows the CME to maintain only two clearing accounts with OCC, a proprietary account and a segregated futures account. If the CME were to carry customer security futures positions for its members in securities accounts as well as futures accounts, the CME would maintain security futures positions from both account types in its segregated futures account at OCC. Although this would result in a commingling of positions subject to CFTC customer protection and insolvency regimes with positions subject to SEC customer protection and SIPC insolvency regimes, we would not consider this commingling to be inconsistent with Note G. A broker-dealer that clears customer SFP transactions through the CME would include any related debit in the Reserve Formula for that customer SFP margin related to that transaction, if appropriate.

G. Amendment to Rule 30–3

The Commission has adopted an amendment to Rule 30–3 of its Rules of Organization and Program Management governing delegations of authority to the Director of the Division of Market Regulation ("Director").[55] The amendment adds paragraph (a)(10)(iii). This paragraph contains a new delegation authorizing the Director to review and grant, unconditionally or subject to specified terms and conditions, written applications submitted under subparagraph (b)(1)(iv) of Item 14, Note G to Rule 15c3–3a for exemptions that would enable broker-dealers to utilize Clearing Organizations that do not meet the requirements of subparagraphs (b)(1)(i)–(b)(1)(iii) of Note G.

The delegation of authority to the Director is intended to conserve Commission resources by permitting the staff to review and act on applications under subparagraph (b)(1)(iv) of Item 14, Note G to Rule 15c3–3a, if appropriate. Nevertheless, the staff may submit matters to the Commission for consideration, as it deems appropriate. Furthermore, the Commission retains discretionary authority under Section 4A(b) of the Exchange Act to review, upon its own initiative or upon application by a party adversely affected, any exemption granted or denied by the Division pursuant to delegated authority.

The Commission finds, in accordance with the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(A), that this amendment to Rule 30–3 relates solely to agency organization, procedure, or practice. Accordingly, notice and opportunity for public comment, as well as publication 30 days before its effective date, are unnecessary. Because notice and comment are not required for this final rule, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act.

The amendment to Rule 30–3 does not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995, as amended. In addition, it will not impose any costs on the public.

V. Paperwork Reduction Act

As discussed in the Proposal, certain provisions of the final amendments to Rule 15c3–3a contain "collection of information requirements" within the meaning of the Paperwork Reduction Act of 1995.[56] The Commission submitted the amendments to the Office of Management and Budget ("OMB") for review and approval in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. The OMB approved a collection of information entitled, "Customer Protection—Reserves and Custody of Securities (17 CFR 240.15c3–3)," OMB Control Number 3235–0078. Because the amendments to Rule 15c3–3, as adopted, are substantially similar

[48] Exchange Act Release No. 46019 (June 3, 2002), 67 FR 39642 (June 10, 2002).

[49] Exchange Act Release No. 46492 (Sept. 12, 2002), 67 FR 59748, at 59754 (Sept. 23, 2002).

[50] OCC Letter, p. 8.

[51] the Proposal would have required a Clearing Organization to make "provisions for" fidelity bond coverage. That phrase was meant to encompass both coverage that a Clearing Organization provides and coverage that an agent provides. The final amendments clarify that scope of fidelity bond coverage; therefore, the phrase is no longer necessary in the final rule test.

[52] Subparagraph (b)(3)(iv) has been redesignated as subparagraph (b)(4) in the final rules.

[53] 67 FR 59747 (Sept. 23, 2002), Exchange Act Release No. 46492 (Sept. 12, 2002).

[54] *Id.*

[55] 17 CFR 200.30–3.

[56] 44 U.S.C. 3501.

to those proposed, the Commission continues to believe that the estimates published in the Proposal regarding the proposed collection of information burdens associated with the amendments to Rule 15c3–3 are appropriate. We solicited, but did not receive, comments on the Paperwork Reduction analysis contained in the Proposal.

A. Collection of Information Under These Amendments

As discussed, the final amendments to Rule 15c3–3a permit a broker-dealer that clears and carries [57] customer SFPs in securities accounts on behalf of customers to include certain credits and debits in its Reserve Formula calculation relating to SFP margin required and on deposit with a Clearing Organization. The amendments permit a broker-dealer to include as a debit the amount of customer SFP margin required and on deposit with a Clearing Organization only if that entity maintains sufficient liquid capital; obtains written notification from a bank that customer SFP margin deposited at, or held by, the bank is held unencumbered, solely for the benefit of customer, and is segregated from non-customer property; and maintains a system for safeguarding the handling, transfer and delivery of cash and SFPs. In addition, the amendments require a broker-dealer to obtain from a DCO not otherwise registered with the Commission an executed undertaking in which the DCO agrees to examination by the Commission to monitor the DCO's compliance with the applicable conditions set forth in the amendments to Rule 15c3–3a, Note G, subparagraphs (b)(1) through (3).

B. Proposed Use of Information

The Commission, self-regulatory organizations ("SROs"), and other securities regulatory authorities will use the information collected under the final amendments to Rule 15c3–3a to determine if a broker-dealer is in compliance with Rule 15c3–3 and with other, related customer protection requirements. The Commission, SROs, and other securities regulatory authorities also will use this information to monitor whether a Clearing Organization has safeguarded customer funds properly.

C. Respondents

The final amendments to Rule 15c3–3a apply only to those broker-dealers that clear and carry SFPs in securities accounts for the benefit of customers. Moreover, these provisions apply only to broker-dealers that carry customer funds, securities, or property and do not claim an exemption from Rule 15c3–3a. As of the end of 2003, there were 607 clearing firms. At that time, there were 46 broker-dealers that were clearing and carrying firms and also registered with the CFTC as FCMs.[58] Based upon conversations between the Commission staff and industry representatives about the number of firms that may conduct SFP business, the staff estimates that the number of firms likely to engage in this business, in addition to the broker-dealers already registered with the CFTC as FCMs, is 10% of the clearing and carry firms not presently registered with the CFTC.[59] Thus, the staff estimates that approximately 102 firms $(46 + ((607 - 46) \times 10\%))$ will be required to comply with these final amendments to obtain the debit treatment.

D. Total Annual Reporting and Recordkeeping Burden

Under the final amendments to add new Item 14, amend and redesignate Item 15, amend Note B and add new Note G to Rule 15c3–3a, a broker-dealer that clears and carries SFPs in securities accounts for the benefit of customers may include customer SFP margin required and on deposit at a Clearing Organization as a debit item in the Reserve Formula. The Commission staff revised the burden hour estimates contained in the Proposal to reflect the latest statistics available from the Securities Industry Association ("SIA"). The staff now estimates that broker-dealers that engage in an SFP business will spend approximately 510 hours (or 5 hours each × 102 clearing broker-dealers) to modify software to accommodate changes in the calculation of the Reserve Formula pursuant to the final amendment to Note B and new Item 14, and amended and redesignated Item 15. This will be a one-time burden. The Commission staff also estimates that broker-dealers will spend approximately 25.5 hours per week (or 0.25 hours × 102 clearing broker-dealers), for a yearly total of 1,326 hours (25.5 hours × 52 weeks), to verify and input the information required under the final amendments to Note B and new Item 14.

Furthermore, broker-dealers that clear and settle SFP transactions through DCOs not otherwise registered with the Commission will spend time to verify that the DCO has made the undertaking to the Commission under subparagraph b to Note G. The Commission staff estimates these broker-dealers will spend 25.5 hours (or 0.25 hours × 102 clearing broker-dealers) to obtain the undertakings. This will be a one-time burden unless a broker-dealer changes clearing DCOs.

Finally, under subparagraph (c) to Note G, broker-dealers will spend time to verify that Clearing Organizations through which they clear SFP transactions meet the conditions of Note G. The Commission staff estimates that these broker-dealers will spend 25.5 (0.25 hours × 102 clearing broker-dealers) to make this verification. Only clearing and carrying broker-dealers that engage in customer SFP transactions will incur any of the costs described above.

E. Collection of Information Is Mandatory

The collection of information is mandatory if a broker-dealer clears and carries SFPs in securities accounts on behalf of customers and wants to record customer margin required and on deposit with a Clearing Organization as a debit item in its Reserve Formula calculation.

F. Confidentiality

The collection of information under the final amendments to Rule 15c3–3a will be provided to the Commission and SROs, but not subject to public availability.

G. Record Retention Period

Rule 17a–4(b)(8)(xiii) requires broker-dealers to preserve information related to possession and control requirements under Rule 15c3–3 for three years, the first two years in an accessible place.

H. Request for Comment

In the Proposal, the Commission solicited comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information would have practical utility;

(ii) Evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those

[57] A clearing and carrying broker-dealer is an entity that may hold customer funds or securities.

[58] The final amendments contain changes in the number of clearing and carrying firms, including changes in the number of clearing and carrying firms registered as FCMs. These new numbers represent the latest statistics available from the Securities Industry Association.

[59] These estimates are identical to those set forth in Exchange Act Release No. 46473 (Sept. 9, 2002).

required to respond, including through the use of automated collection techniques or other forms of information technology. The Commission did not receive any comments on Paperwork Reduction Act issues.

VI. Costs and Benefits of the Proposed Amendments

A. Introduction

Passage of the CFMA in December of 2000 permitted the trading of SFPs and established a framework for the Commission and CFTC to regulate SFPs jointly. This framework was necessary because the CFMA defined an SFP as both a security and a future[60] and, therefore, subject both to the CEA and the Exchange Act. Accordingly, both Clearing Agencies, which are regulated by the Commission, and DCOs, which are regulated by the CFTC, may clear SFPs. Consistent with these provisions, the Commission is amending Exchange Act Rule 15c3–3a by redesignating Item 14 as Item 15, adding new Item 14 and new Note G, amending Item B and amending newly redesignated Item 15. We did not receive any comments on the cost-benefit analysis contained in the Proposal.

B. Benefits

The final amendments to Rule 15c3–3a are intended to enhance the customer protection function of Rule 15c3–3. In particular, Note G is drafted to help protect customer property by requiring that a broker-dealer, if it wishes to include customer SFP margin as a debit item in the Reserve Formula, clear and settle its customer SFP transactions only through a Clearing Organization that has significant financial resources. Note G is further intended to protect customer property by permitting the debit treatment only if a broker-dealer uses a Clearing Organization that meets requirements related to the identification and segregation of customer property. This requirement is intended to prevent use of customer property for non-customer purposes. The internal risk management system mandated under Note G seeks to protect a broker-dealer and its customers by helping its Clearing Organization to monitor whether customer margin is protected from both default and use in other areas of the entity's business. These enhanced customer protections decrease the likelihood of a SIPC liquidation.

Amended Note B, new Item 14, and new Note G are intended to help a broker-dealer that clears and carries SFPs in securities accounts on behalf of customers calculate the appropriate customer reserve requirement under the Reserve Formula. Without amended Note B, a broker-dealer's Reserve Formula computation would not include a credit to reflect the firm's use of customer assets to secure a letter of credit, which is then used as customer SFP margin deposit with a Clearing Organization. Similarly, without Item 14 and Note G, a broker-dealer's Reserve Formula computation would not include a debit to reflect the firm's use of its own assets for customer purposes to meet its customer SFP margin deposit requirements. In that case, a broker-dealer's regulatory costs would be higher.

Amended Note B, new Item 14 and new Note G permit a broker-dealer to include the amount of customer SFP margin required and on deposit at a Clearing Organization as a debit in the Reserve Formula. Without these changes to Rule15c3–3a, the broker-dealer would be required to fund its customer reserve requirement at least in part with proprietary assets, which would require the broker-dealer to maintain two reserves to cover the same customer property, one reserve in the Reserve Bank Account and the second with the Clearing Organization. Consequently, the costs of engaging in a customer SFP business would increase. Thus, amended Note B, new Item 14 and new Note G should lower the costs of clearing and carrying SFPs in customer securities accounts.

C. Costs

The amendments were drafted to reduce the burden of the Reserve Formula on broker-dealers by allowing a broker-dealer to include the amount of customer SFP margin required and on deposit at a Clearing Organization as a debit in the Reserve Formula. This treatment permits a broker-dealer that clears and carries SFPs in securities accounts on behalf of customers to calculate the appropriate customer reserve requirement.

Amended Note B requires a broker-dealer to include certain customer SFP margin required and on deposit with a Clearing Organization as a credit item in the Reserve Formula. New Item 14 permits a broker-dealer to include customer SFP margin required and on deposit with a Clearing Organization as a debit item. The Commission staff has updated costs estimates delineated below to reflect the most recent statistics available from the SIA. A broker-dealer will incur a one-time cost to re-program software that performs Reserve Formula calculations to include Note B and Item 14 in those calculations. Based on the paperwork costs described above, the Commission staff estimates total reprogramming costs will be $29,172.[61]

Under amended Note B and new Item 14, broker-dealers also will incur minimal, annual costs to verify and input debit item amounts into its customer reserve requirement calculation. We estimate the yearly paperwork burden will be 1,326 hours to complete these tasks. Therefore, the Commission staff estimates the annual paperwork cost to broker-dealers will be $55,739 (1,326 hours × $37 per hour for an operations specialist).[62]

Moreover, broker-dealers that clear SFP transactions through a DCO will incur costs to obtain an undertaking from the DCO, as Note G requires. The Commission staff estimates the paperwork cost to broker-dealers of obtaining the undertaking required under Note G will be $2,097.63.[63] The costs will be recurring only if the broker-dealer changes its clearing DCO.

Finally, under subparagraph (c) to Note G, broker-dealers will incur costs each year to verify that Clearing Organizations through which they clear SFP transactions meet the conditions of Note G. The Commission staff estimates that the annual cost of making this verification will be $2097.63 (0.25 hours × 102 broker-dealers × $82.26 per hour for an attorney).[64] Only clearing and carrying broker-dealers that engage in customer SFP transactions will incur any of the costs described above.

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[60] Exchange Act sections 3(a)(10) and (11) (15 U.S.C. 78c(a)(10) and (11)).

[61] Security Industry Association's ("SIA") *Report on Management and Professional Earnings in the Securities Industry 2003* ("2003 Report"). According to the 2003 Report, the hourly cost of a programmer is approximately $55 and the hourly cost of a senior programmer is approximately $66. These hourly wage costs, and all other hourly wage costs in this document, include a 35% increase above the SIA wage figures to account for overhead costs. The staff estimates that a programmer would spend approximately four hours to modify software to meet the requirements of proposed Note B and Items 14 and 15. Further, the Staff estimates that a senior programmer would spend approximately one hour on the project. Total cost: ((4 hours × $55 per hour × 102 broker-dealers) + (1 hour × $66 per hour × 102 broker-dealers)) = $29,172.

[62] 2003 Report.

[63] The SIA's 2003 Report's survey on attorney salaries in the securities industry contained only one response, which was unrealistically low. Consequently, we used the salary data from the SIA's *Report on Management and Professional Earnings in the Securities Industry 2002* ("2002 Report"). According to the 2002 Report, the hourly cost of an attorney is approximately $82.26. The Staff estimates that an attorney would spend approximately 15 minutes obtaining the undertaking. Total cost: (0.25 × 102 broker-dealers × $82.26 per hour) = $2,097.63.

[64] 2002 Report.

VII. Consideration of Burden on Competition, and Promotion of Efficiency, Competition, and Capital Formation

Section 3(f) of the Exchange Act[65] requires the Commission, whenever it engages in rulemaking and must consider or determine if an action is necessary or appropriate in the public interest, to consider if the action will promote efficiency, competition, and capital formation. Section 23(a)(2) of the Exchange Act[66] requires the Commission, in making rules under the Exchange Act, to consider the impact that any such rule would have on competition. Exchange Act Section 23(a)(2) prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

In the Proposal, the Commission solicited comments on the effect of the proposed amendments on competition, efficiency, and capital formation. The Commission did not receive any comments that addressed this issue.

The final amendments to Rule 15c3–3a clarify the treatment of customer SFP margin required and on deposit with a Clearing Organization for purposes of calculating a broker-dealer's customer reserve requirement under the Reserve Formula. We believe that clarification of the debit treatment of customer SFP margin for Reserve Formula purposes will serve as an efficient and cost-effective means for broker-dealers to determine how they will calculate their customer reserve requirements if they clear and carry SFPs in securities accounts for the benefit of customers. We expect the final amendments to Rule 15c3–3a to promote efficiency because firms still may use their present systems for computation of customer reserve requirements under the Reserve Formula, after they make the required adjustments, rather than build new Reserve Formula systems.

Furthermore, the final amendments to Rule 15c3–3a are intended to allow a broker-dealer to avoid depositing proprietary assets unnecessarily in the Reserve Bank Account to meet its obligations under the Reserve Formula. We believe that the amendments will permit a broker-dealer to direct a greater portion of its assets to its businesses and, therefore, promote capital formation.

As discussed, the final amendments to Rule 15c3–3a permit a broker-dealer that clears and carries SFPs in securities accounts on behalf of customers to include customer SFP margin required and on deposit with a Clearing Organization as a debit item for purposes of calculating its customer reserve requirement under the Reserve Formula. The final amendments permit this treatment regardless of whether the broker-dealer clears customer SFP transactions through a Clearing Agency or DCO, if the Clearing Agency or DCO meets certain minimum financial standards and segregates customer SFP margin funds. Thus, we believe that the final amendments to Rule 15c3–3a will not impose any competitive burden that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

VIII. Regulatory Flexibility Act Certification

The Commission has certified, pursuant to 5 U.S.C. section 605(b), that the amendments to Rule 15c3–3a will not have a significant economic impact on a substantial number of small entities. This certification was incorporated into the Proposal. The Commission did not receive any comments about the impact on small entities or the Regulatory Flexibility Act certification.

IX. Statutory Authority

The Commission is amending Rule 15c3–3a under the Exchange Act pursuant to the authority conferred by the Exchange Act, including Sections 15, 17, 23(a), and 36.[67]

List of Subjects

17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies), Organization and functions (Government agencies).

17 CFR Part 240

Brokers, Reporting and recordkeeping requirements, Securities.

Text of Final Rule Amendments

■ In accordance with the foregoing, the Commission hereby amends Title 17, Chapter II of the Code of Federal Regulation as follows.

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart A—Organization and Program Management

■ 1. The authority section for Part 200, subpart A, continues to read, in part, as follows:

Authority: 15 U.S.C. 77s, 77o, 77sss, 78d, 78d–1, 78d–2, 78w, 78ll(d), 78mm, 79t, 80a–37, 80b–11, and 7202, unless otherwise noted.

* * * * *

■ 2. Section 200.30–3 is amended by adding paragraph (a)(10)(iii) to read as follows:

§ 200.30–3 Delegation of authority to Director of Division of Market Regulation.

* * * * *

(a) * * *

(10) * * *

(iii) Pursuant to section 36(a) of the Act (15 U.S.C. 78mm(a)), to review and grant written applications for an exemption, unconditionally or subject to specified terms and conditions, for a broker or dealer to utilize a clearing agency registered with the Commission under section 17A of the Act (15 U.S.C. 78q–1) or a derivatives clearing organization registered with the Commodity Futures Trading Commission under section 5b of the Commodity Exchange Act (7 U.S.C. 7a–1) that does not meet the requirements of 17 CFR 240.15c3–3a, Note G.(b)(1)(i) through (iii).

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 3. The authority citation for Part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–l, 78k, 78k–1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78ll, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 4. Section 240.15c3–3a is amended by:

■ a. In the chart, redesignating Item No. 14 as Item No. 15;

■ b. Adding new Item No. 14;

■ c. Revising newly redesignated Item No. 15;

■ d. Revising Note B; and

■ e. Adding Note G.

The revisions and additions read as follows:

§ 240.15c3–3a Exhibit A-formula for determination of reserve requirement of brokers and dealers under § 240.15c3–3.

* * * * *

[65] 15 U.S.C. 78c(f).

[66] 15 U.S.C. 78w(a)(2).

[67] 15 U.S.C. 78o, 78q, 78w(a), and 78mm.

	Credits	Debits
14. Margin related to security futures products written, purchased or sold in customer accounts required and on deposit with a clearing agency registered with the Commission under section 17A of the Act (15 U.S.C. 17A) or a derivatives clearing organization registered with the Commodity Futures Trading Commission under section 5b of the Commodity Exchange Act (7 U.S.C. 7a–1). (See Note G)		XXX
Total Credits		
Total Debits		
15. Excess of total credits (sum of items 1–9) over total debits (sum of items 10–14) required to be on deposit in the "Reserve Bank Account" (§ 240.15c3–3(e)). If the computation is made monthly as permitted by this section, the deposit shall be not less than 105 percent of the excess of total credits over total debits		XXX

* * * * *

Note B. Item 2 shall include the amount of options-related or security futures product-related Letters of Credit obtained by a member of a registered clearing agency or a derivatives clearing organization which are collateralized by customers' securities, to the extent of the member's margin requirement at the registered clearing agency or derivatives clearing organization.

* * * * *

Note G. (a) Item 14 shall include the amount of margin required and on deposit with a clearing agency registered with the Commission under section 17A of the Act (15 U.S.C. 78q–1) or a derivatives clearing organization registered with the Commodity Futures Trading Commission under section 5b of the Commodity Exchange Act (7 U.S.C. 7a–1) for customer accounts to the extent that the margin is represented by cash, proprietary qualified securities, and letters of credit collateralized by customers' securities.

(b) Item 14 shall apply only if the broker or dealer has the margin related to security futures products on deposit with:

(1) A registered clearing agency or derivatives clearing organization that:

(i) Maintains the highest investment-grade rating from a nationally recognized statistical rating organization; or

(ii) Maintains security deposits from clearing members in connection with regulated options or futures transactions and assessment power over member firms that equal a combined total of at least $2 billion, at least $500 million of which must be in the form of security deposits. For purposes of this Note G, the term "security deposits" refers to a general fund, other than margin deposits or their equivalent, that consists of cash or securities held by a registered clearing agency or derivative clearing organization; or

(iii) Maintains at least $3 billion in margin deposits; or

(iv) Does not meet the requirements of paragraphs (b)(1)(i) through (b)(1)(iii) of this Note G, if the Commission has determined, upon a written request for exemption by or for the benefit of the broker or dealer, that the broker or dealer may utilize such a registered clearing agency or derivatives clearing organization. The Commission may, in its sole discretion, grant such an exemption subject to such conditions as are appropriate under the circumstances, if the Commission determines that such conditional or unconditional exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors; and

(2) A registered clearing agency or derivatives clearing organization that, if it holds funds or securities deposited as margin for security futures products in a bank, as defined in section 3(a)(6) of the Act (15 U.S.C. 78c(a)(6)), obtains and preserves written notification from the bank at which it holds such funds and securities or at which such funds and securities are held on its behalf. The written notification shall state that all funds and/or securities deposited with the bank as margin (including customer security futures products margin), or held by the bank and pledged to such registered clearing agency or derivatives clearing agency as margin, are being held by the bank for the exclusive benefit of clearing members of the registered clearing agency or derivatives clearing organization (subject to the interest of such registered clearing agency or derivatives clearing organization therein), and are being kept separate from any other accounts maintained by the registered clearing agency or derivatives clearing organization with the bank. The written notification also shall provide that such funds and/or securities shall at no time be used directly or indirectly as security for a loan to the registered clearing agency or derivatives clearing organization by the bank, and shall be subject to no right, charge, security interest, lien, or claim of any kind in favor of the bank or any person claiming through the bank. This provision, however, shall not prohibit a registered clearing agency or derivatives clearing organization from pledging customer funds or securities as collateral to a bank for any purpose that the rules of the Commission or the registered clearing agency or derivatives clearing organization otherwise permit; and

(3) A registered clearing agency or derivatives clearing organization that establishes, documents, and maintains:

(i) Safeguards in the handling, transfer, and delivery of cash and securities;

(ii) Fidelity bond coverage for its employees and agents who handle customer funds or securities. In the case of agents of a registered clearing agency or derivatives clearing organization, the agent may provide the fidelity bond coverage; and

(iii) Provisions for periodic examination by independent public accountants; and

(4) A derivatives clearing organization that, if it is not otherwise registered with the Commission, has provided the Commission with a written undertaking, in a form acceptable to the Commission, executed by a duly authorized person at the derivatives clearing organization, to the effect that, with respect to the clearance and settlement of the customer security futures products of the broker-dealer, the derivatives clearing organization will permit the Commission to examine the books and records of the derivatives clearing organization for compliance with the requirements set forth in § 240.15c3–3a, Note G. (b)(1) through (3).

(c) Item 14 shall apply only if a broker or dealer determines, at least annually, that the registered clearing agency or derivatives clearing organization with which the broker or dealer has on deposit margin related to securities future products meets the conditions of this Note G.

Dated: August 31, 2004.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–20188 Filed 9–3–04; 8:45 am]

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869-052-00001-9)	9.00	[4]Jan. 1, 2004
3 (2003 Compilation and Parts 100 and 101)	(869-052-00002-7)	35.00	[1] Jan. 1, 2004
4	(869-052-00003-5)	10.00	Jan. 1, 2004
5 Parts:			
1-699	(869-052-00004-3)	60.00	Jan. 1, 2004
700-1199	(869-052-00005-1)	50.00	Jan. 1, 2004
1200-End	(869-052-00006-0)	61.00	Jan. 1, 2004
6	(869-052-00007-8)	10.50	Jan. 1, 2004
7 Parts:			
1-26	(869-052-00008-6)	44.00	Jan. 1, 2004
27-52	(869-052-00009-4)	49.00	Jan. 1, 2004
53-209	(869-052-00010-8)	37.00	Jan. 1, 2004
210-299	(869-052-00011-6)	62.00	Jan. 1, 2004
300-399	(869-052-00012-4)	46.00	Jan. 1, 2004
400-699	(869-052-00013-2)	42.00	Jan. 1, 2004
700-899	(869-052-00014-1)	43.00	Jan. 1, 2004
900-999	(869-052-00015-9)	60.00	Jan. 1, 2004
1000-1199	(869-052-00016-7)	22.00	Jan. 1, 2004
1200-1599	(869-052-00017-5)	61.00	Jan. 1, 2004
1600-1899	(869-052-00018-3)	64.00	Jan. 1, 2004
1900-1939	(869-052-00019-1)	31.00	Jan. 1, 2004
1940-1949	(869-052-00020-5)	50.00	Jan. 1, 2004
1950-1999	(869-052-00021-3)	46.00	Jan. 1, 2004
2000-End	(869-052-00022-1)	50.00	Jan. 1, 2004
8	(869-052-00023-0)	63.00	Jan. 1, 2004
9 Parts:			
1-199	(869-052-00024-8)	61.00	Jan. 1, 2004
200-End	(869-052-00025-6)	58.00	Jan. 1, 2004
10 Parts:			
1-50	(869-052-00026-4)	61.00	Jan. 1, 2004
51-199	(869-052-00027-2)	58.00	Jan. 1, 2004
200-499	(869-052-00028-1)	46.00	Jan. 1, 2004
500-End	(869-052-00029-9)	62.00	Jan. 1, 2004
11	(869-052-00030-2)	41.00	Feb. 3, 2004
12 Parts:			
1-199	(869-052-00031-1)	34.00	Jan. 1, 2004
200-219	(869-052-00032-9)	37.00	Jan. 1, 2004
220-299	(869-052-00033-7)	61.00	Jan. 1, 2004
300-499	(869-052-00034-5)	47.00	Jan. 1, 2004
500-599	(869-052-00035-3)	39.00	Jan. 1, 2004
600-899	(869-052-00036-1)	56.00	Jan. 1, 2004
900-End	(869-052-00037-0)	50.00	Jan. 1, 2004
13	(869-052-00038-8)	55.00	Jan. 1, 2004
14 Parts:			
1-59	(869-052-00039-6)	63.00	Jan. 1, 2004
60-139	(869-052-00040-0)	61.00	Jan. 1, 2004
140-199	(869-052-00041-8)	30.00	Jan. 1, 2004
200-1199	(869-052-00042-6)	50.00	Jan. 1, 2004
1200-End	(869-052-00043-4)	45.00	Jan. 1, 2004
15 Parts:			
0-299	(869-052-00044-2)	40.00	Jan. 1, 2004
300-799	(869-052-00045-1)	60.00	Jan. 1, 2004
800-End	(869-052-00046-9)	42.00	Jan. 1, 2004
16 Parts:			
0-999	(869-052-00047-7)	50.00	Jan. 1, 2004
1000-End	(869-052-00048-5)	60.00	Jan. 1, 2004
17 Parts:			
1-199	(869-052-00050-7)	50.00	Apr. 1, 2004
200-239	(869-052-00051-5)	58.00	Apr. 1, 2004
240-End	(869-052-00052-3)	62.00	Apr. 1, 2004
18 Parts:			
1-399	(869-052-00053-1)	62.00	Apr. 1, 2004
400-End	(869-052-00054-0)	26.00	Apr. 1, 2004
19 Parts:			
*1-140	(869-052-00055-8)	61.00	Apr. 1, 2004
*141-199	(869-052-00055-6)	58.00	Apr. 1, 2004
200-End	(869-052-00057-4)	31.00	Apr. 1, 2004
20 Parts:			
1-399	(869-052-00058-2)	50.00	Apr. 1, 2004
400-499	(869-052-00059-1)	64.00	Apr. 1, 2004
500-End	(869-052-00060-9)	63.00	Apr. 1, 2004
21 Parts:			
1-99	(869-052-00061-2)	42.00	Apr. 1, 2004
100-169	(869-052-00061-0)	47.00	Apr. 1, 2004
170-199	(869-052-00063-9)	50.00	Apr. 1, 2004
200-299	(869-052-00064-7)	17.00	Apr. 1, 2004
*300-499	(869-052-00065-5)	31.00	Apr. 1, 2004
500-599	(869-052-00066-3)	47.00	Apr. 1, 2004
600-799	(869-052-00067-1)	15.00	Apr. 1, 2004
800-1299	(869-052-00068-0)	58.00	Apr. 1, 2004
1300-End	(869-052-00069-8)	24.00	Apr. 1, 2004
22 Parts:			
1-299	(869-052-00070-1)	63.00	Apr. 1, 2004
300-End	(869-052-00071-0)	45.00	Apr. 1, 2004
23	(869-052-00072-8)	45.00	Apr. 1, 2004
24 Parts:			
0-199	(869-052-00073-6)	60.00	Apr. 1, 2004
*200-499	(869-052-00074-4)	50.00	Apr. 1, 2004
500-699	(869-052-00075-2)	30.00	Apr. 1, 2004
*700-1699	(869-052-00076-1)	61.00	Apr. 1, 2004
1700-End	(869-052-00077-9)	30.00	Apr. 1, 2004
25	(869-052-00078-7)	63.00	Apr. 1, 2004
26 Parts:			
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§§ 1.61-1.169	(869-052-00080-9)	63.00	Apr. 1, 2004
§§ 1.170-1.300	(869-052-00081-7)	60.00	Apr. 1, 2004
§§ 1.301-1.400	(869-052-00082-5)	46.00	Apr. 1, 2004
§§ 1.401-1.440	(869-052-00083-3)	62.00	Apr. 1, 2004
§§ 1.441-1.500	(869-052-00084-1)	57.00	Apr. 1, 2004
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§§ 1.641-1.850	(869-052-00086-8)	60.00	Apr. 1, 2004
§§ 1.851-1.907	(869-052-00087-6)	61.00	Apr. 1, 2004
§§ 1.908-1.1000	(869-052-00088-4)	60.00	Apr. 1, 2004
*§§ 1.1001-1.1400	(869-052-00089-2)	61.00	Apr. 1, 2004
*§§ 1.1401-1.1503-2A	(869-052-00090-6)	55.00	Apr. 1, 2004
§§ 1.1551-End	(869-052-00091-4)	55.00	Apr. 1, 2004
2-29	(869-052-00092-2)	60.00	Apr. 1, 2004
30-39	(869-052-00093-1)	41.00	Apr. 1, 2004
40-49	(869-052-00094-9)	28.00	Apr. 1, 2004
*50-299	(869-052-00095-7)	41.00	Apr. 1, 2004
300-499	(869-052-00096-5)	61.00	Apr. 1, 2004

Title	Stock Number	Price	Revision Date
*500–599	(869–052–00097–3)	12.00	[5]Apr. 1, 2004
*600–End	(869–052–00098–1)	17.00	Apr. 1, 2004
27 Parts:			
1–199	(869–052–00099–0)	64.00	Apr. 1, 2004
200–End	(869–052–00100–7)	21.00	Apr. 1, 2004
28 Parts:			
*0–42	(869–052–00101–5)	61.00	July 1, 2004
43–End	(869–050–00101–2)	58.00	July 1, 2003
29 Parts:			
*0–99	(869–052–00103–1)	50.00	July 1, 2004
100–499	(869–050–00103–9)	22.00	July 1, 2003
500–899	(869–052–00105–8)	61.00	July 1, 2004
900–1899	(869–052–00106–6)	36.00	July 1, 2004
1900–1910 (§§ 1900 to 1910.999)	(869–050–00106–3)	61.00	July 1, 2003
*1910 (§§ 1910.1000 to end)	(869–052–00108–2)	46.00	[8]July 1, 2004
1911–1925	(869–050–00108–0)	30.00	July 1, 2003
1926	(869–050–00109–8)	50.00	July 1, 2003
1927–End	(869–050–00110–1)	62.00	July 1, 2003
30 Parts:			
1–199	(869–050–00111–0)	57.00	July 1, 2003
200–699	(869–050–00112–8)	50.00	July 1, 2003
700–End	(869–050–00113–6)	57.00	July 1, 2003
31 Parts:			
0–199	(869–050–00114–4)	40.00	July 1, 2003
200–End	(869–050–00115–2)	64.00	July 1, 2003
32 Parts:			
1–39, Vol. I		15.00	[2]July 1, 1984
1–39, Vol. II		19.00	[2]July 1, 1984
1–39, Vol. III		18.00	[2]July 1, 1984
1–190	(869–050–00116–1)	60.00	July 1, 2003
191–399	(869–050–00117–9)	63.00	July 1, 2003
*400–629	(869–052–00119–8)	50.00	[8]July 1, 2004
*630–699	(869–052–00120–1)	37.00	[7]July 1, 2004
700–799	(869–050–00120–9)	46.00	July 1, 2003
*800–End	(869–052–00122–8)	47.00	July 1, 2004
33 Parts:			
1–124	(869–050–00122–5)	55.00	July 1, 2003
125–199	(869–050–00123–3)	61.00	July 1, 2003
200–End	(869–050–00124–1)	50.00	July 1, 2003
34 Parts:			
1–299	(869–050–00125–0)	49.00	July 1, 2003
300–399	(869–050–00126–8)	43.00	[7]July 1, 2003
400–End	(869–050–00127–6)	61.00	July 1, 2003
***35**	(869–052–00129–5)	10.00	[6]July 1, 2004
36 Parts			
1–199	(869–050–00129–2)	37.00	July 1, 2003
200–299	(869–050–00130–6)	37.00	July 1, 2003
300–End	(869–050–00131–4)	61.00	July 1, 2003
37	(869–050–00132–2)	50.00	July 1, 2003
38 Parts:			
*0–17	(869–052–00134–1)	60.00	July 1, 2004
18–End	(869–050–00134–9)	62.00	July 1, 2003
39	(869–050–00135–7)	41.00	July 1, 2003
40 Parts:			
1–49	(869–050–00136–5)	60.00	July 1, 2003
50–51	(869–050–00137–3)	44.00	July 1, 2003
52 (52.01–52.1018)	(869–050–00138–1)	58.00	July 1, 2003
52 (52.1019–End)	(869–050–00139–0)	61.00	July 1, 2003
*53–59	(869–052–00141–4)	31.00	July 1, 2004
60 (60.1–End)	(869–050–00141–1)	58.00	July 1, 2003
60 (Apps)	(869–050–00142–0)	51.00	[8]July 1, 2003
61–62	(869–050–00143–8)	43.00	July 1, 2003
63 (63.1–63.599)	(869–050–00144–6)	58.00	July 1, 2003
63 (63.600–63.1199)	(869–050–00145–4)	50.00	July 1, 2003
63 (63.1200–63.1439)	(869–050–00146–2)	50.00	July 1, 2003
63 (63.1440–End)	(869–050–00147–1)	64.00	July 1, 2003
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72–80	(869–050–00149–7)	61.00	July 1, 2003
81–85	(869–050–00150–1)	50.00	July 1, 2003
86 (86.1–86.599–99)	(869–050–00151–9)	57.00	July 1, 2003
86 (86.600–1–End)	(869–050–00152–7)	50.00	July 1, 2003
87–99	(869–050–00153–5)	60.00	July 1, 2003
100–135	(869–050–00154–3)	43.00	July 1, 2003
136–149	(869–150–00155–1)	61.00	July 1, 2003
150–189	(869–050–00156–0)	49.00	July 1, 2003
190–259	(869–050–00157–8)	39.00	July 1, 2003
260–265	(869–050–00158–6)	50.00	July 1, 2003
266–299	(869–050–00159–4)	50.00	July 1, 2003
300–399	(869–050–00160–8)	42.00	July 1, 2003
*400–424	(869–052–00163–5)	56.00	[8]July 1, 2004
425–699	(869–050–00162–4)	61.00	July 1, 2003
700–789	(869–050–00163–2)	61.00	July 1, 2003
790–End	(869–050–00164–1)	58.00	July 1, 2003
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1, 1–1 to 1–10		13.00	[3]July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3]July 1, 1984
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7		6.00	[3]July 1, 1984
8		4.50	[3]July 1, 1984
9		13.00	[3]July 1, 1984
10–17		9.50	[3]July 1, 1984
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19–100		13.00	[3]July 1, 1984
1–100	(869–052–00167–8)	24.00	July 1, 2004
*101	(869–052–00168–6)	21.00	July 1, 2004
102–200	(869–050–00167–5)	50.00	July 1, 2003
201–End	(869–050–00168–3)	22.00	July 1, 2003
42 Parts:			
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400–429	(869–050–00170–5)	62.00	Oct. 1, 2003
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43 Parts:			
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44	(869–050–00174–8)	50.00	Oct. 1, 2003
45 Parts:			
1–199	(869–050–00175–6)	60.00	Oct. 1, 2003
200–499	(869–050–00176–4)	33.00	Oct. 1, 2003
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46 Parts:			
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70–89	(869–050–00181–1)	14.00	Oct. 1, 2003
90–139	(869–050–00182–9)	44.00	Oct. 1, 2003
140–155	(869–050–00183–7)	25.00	Oct. 1, 2003
156–165	(869–050–00184–5)	34.00	Oct. 1, 2003
166–199	(869–050–00185–3)	46.00	Oct. 1, 2003
200–499	(869–050–00186–1)	39.00	Oct. 1, 2003
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70–79	(869–050–00191–8)	61.00	Oct. 1, 2003
80–End	(869–050–00192–6)	61.00	Oct. 1, 2003
48 Chapters:			
1 (Parts 1–51)	(869–050–00193–4)	63.00	Oct. 1, 2003
1 (Parts 52–99)	(869–050–00194–2)	50.00	Oct. 1, 2003
2 (Parts 201–299)	(869–050–00195–1)	55.00	Oct. 1, 2003
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7–14	(869–050–00197–7)	61.00	Oct. 1, 2003
15–28	(869–050–00198–5)	57.00	Oct. 1, 2003
29–End	(869–050–00199–3)	38.00	[9]Oct. 1, 2003
49 Parts:			
1–99	(869–050–00200–1)	60.00	Oct. 1, 2003

Title	Stock Number	Price	Revision Date
100–185	(869–050–00201–9)	63.00	Oct. 1, 2003
186–199	(869–050–00202–7)	20.00	Oct. 1, 2003
200–399	(869–050–00203–5)	64.00	Oct. 1, 2003
400–599	(869–050–00204–3)	63.00	Oct. 1, 2003
600–999	(869–050–00205–1)	22.00	Oct. 1, 2003
1000–1199	(869–050–00206–0)	26.00	Oct. 1, 2003
1200–End	(869–048–00207–8)	33.00	Oct. 1, 2003
50 Parts:			
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17.1–17.95	(869–050–00209–4)	62.00	Oct. 1, 2003
17.96–17.99(h)	(869–050–00210–8)	61.00	Oct. 1, 2003
17.99(i)–end	(869–050–00211–6)	50.00	Oct. 1, 2003
18–199	(869–050–00212–4)	42.00	Oct. 1, 2003
200–599	(869–050–00213–2)	44.00	Oct. 1, 2003
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2003, through January 1, 2004. The CFR volume issued as of January 1, 2002 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2004. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2004. The CFR volume issued as of July 1, 2000 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2002, through July 1, 2004. The CFR volume issued as of July 1, 2002 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2003, through July 1, 2004. The CFR volume issued as of July 1, 2003 should be retained.

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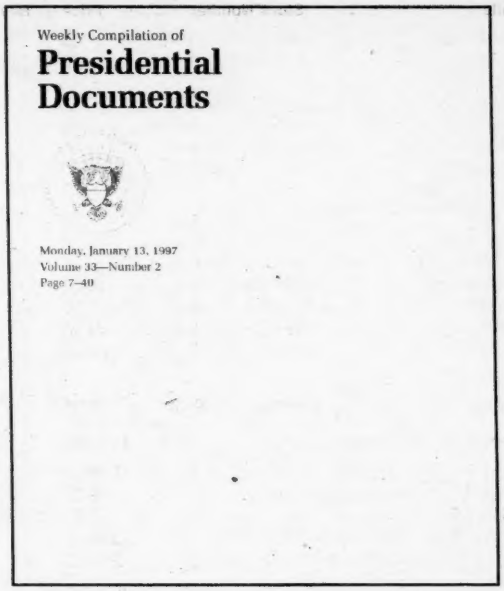

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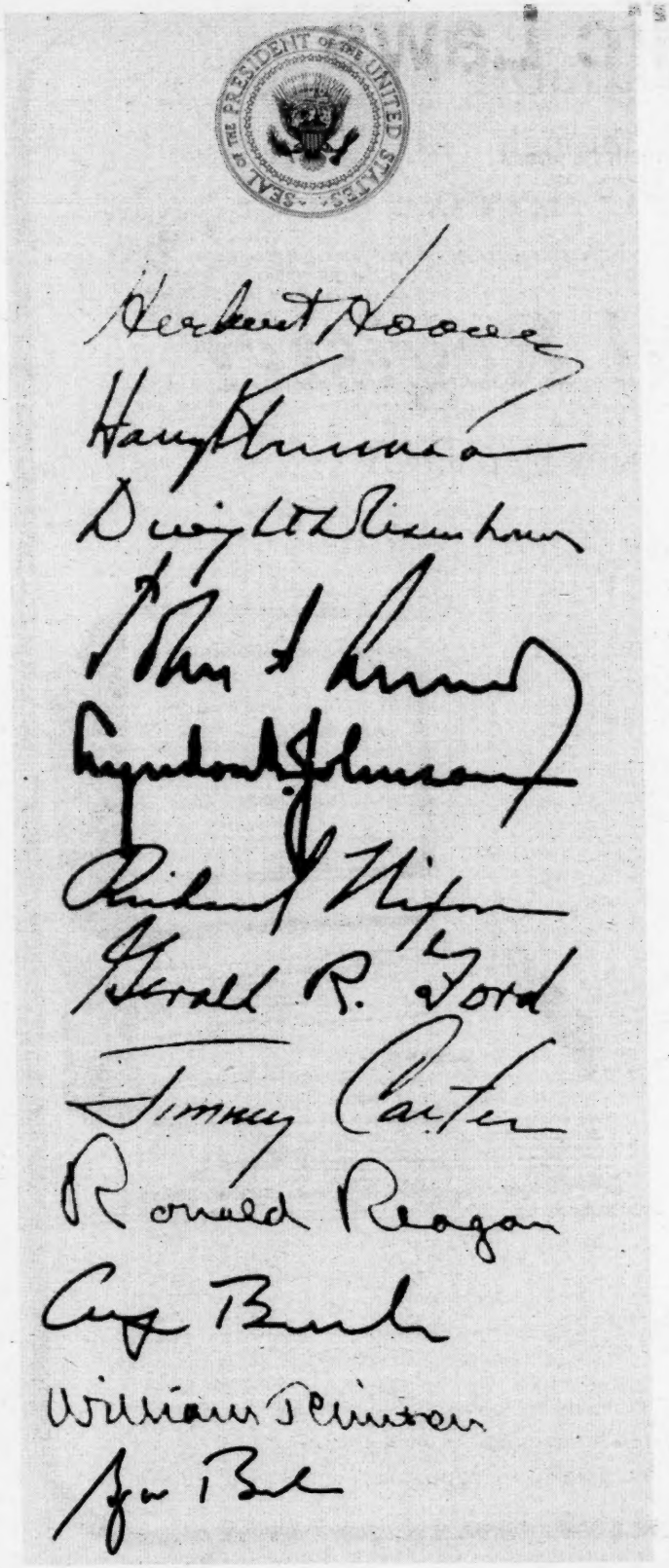

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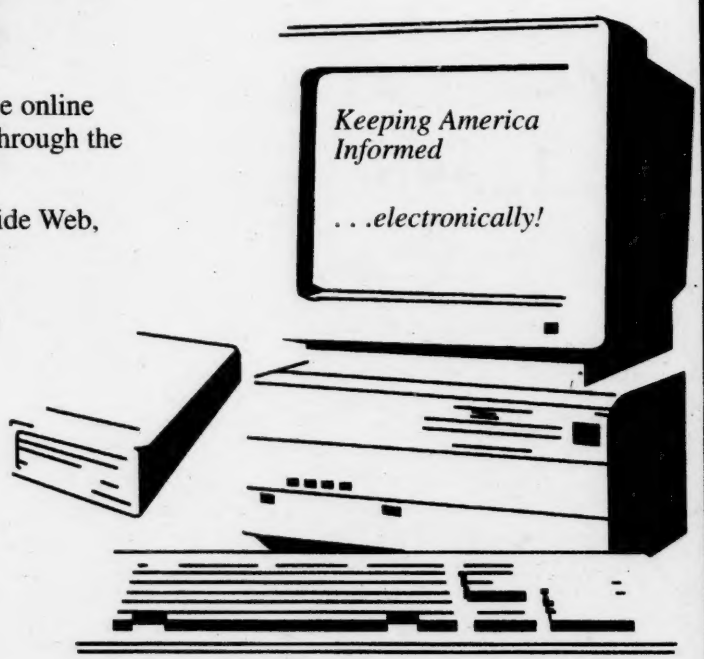

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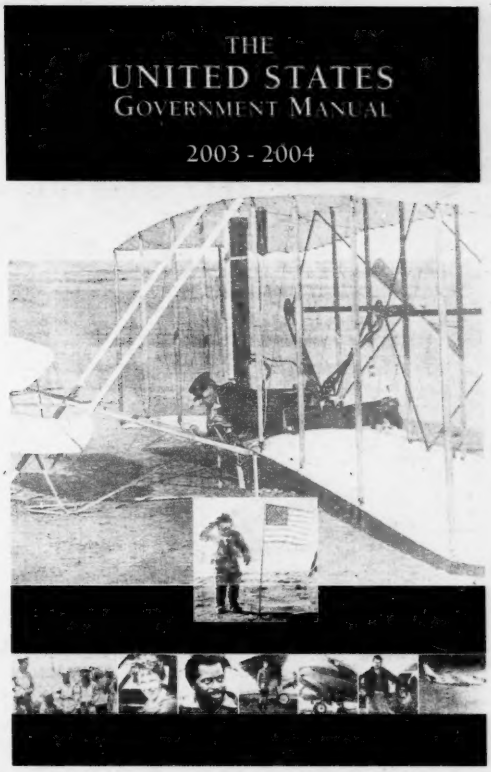

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